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JONAS KING

AND

CONSTANTINE SIMONIDES

1854

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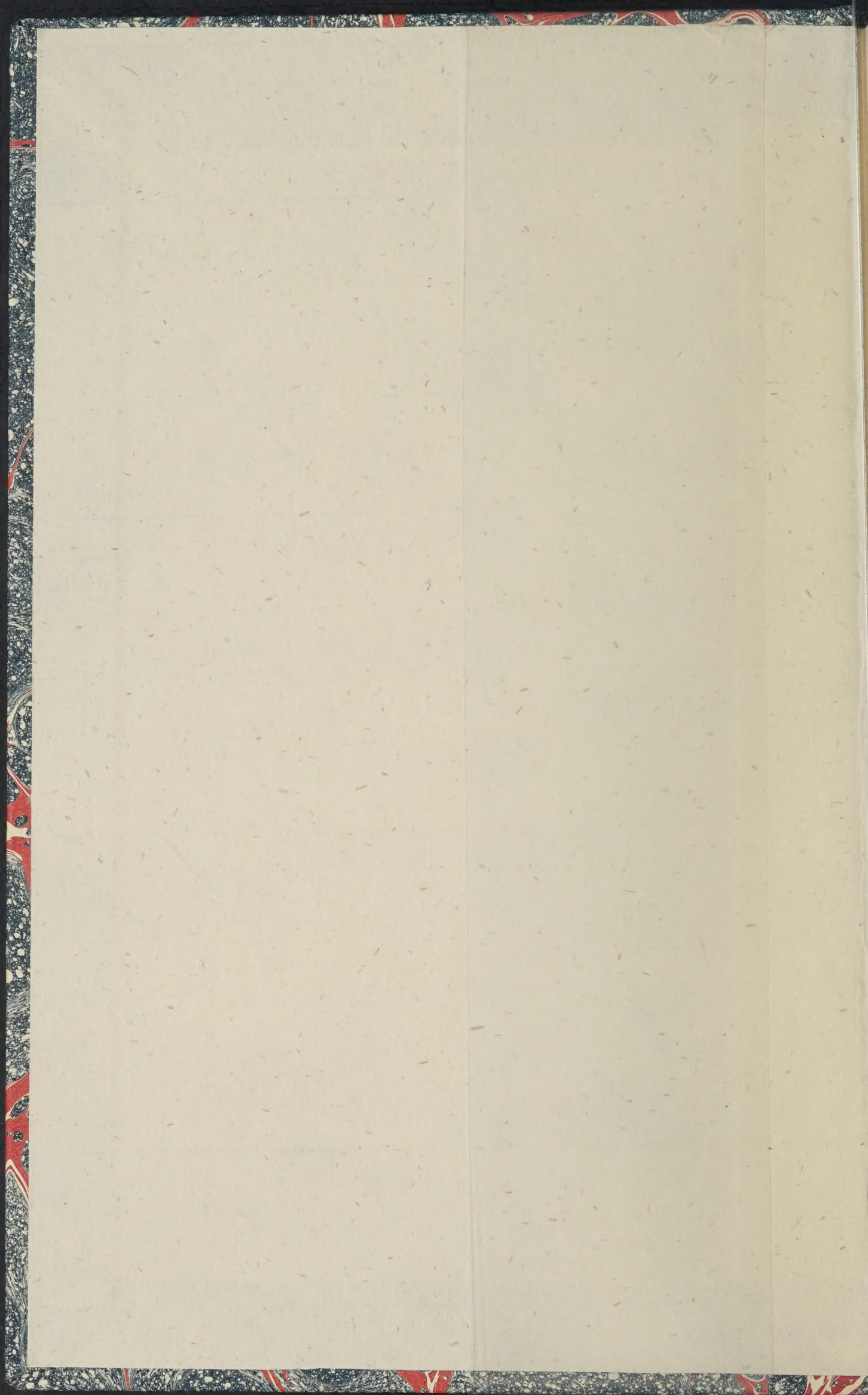
MESSAGE
FROM
PRESIDENT
OF THE
UNITED STATES

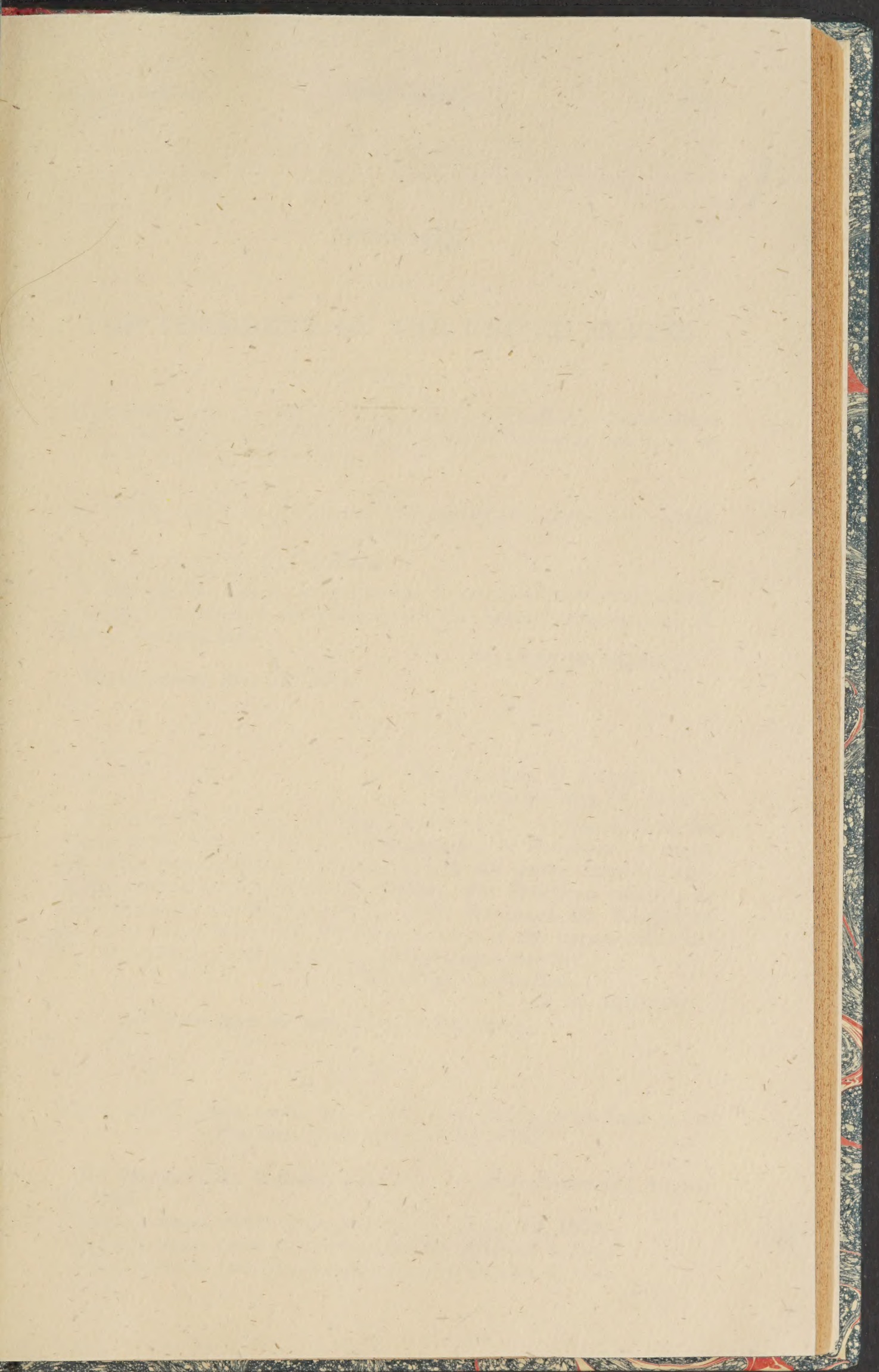
1854

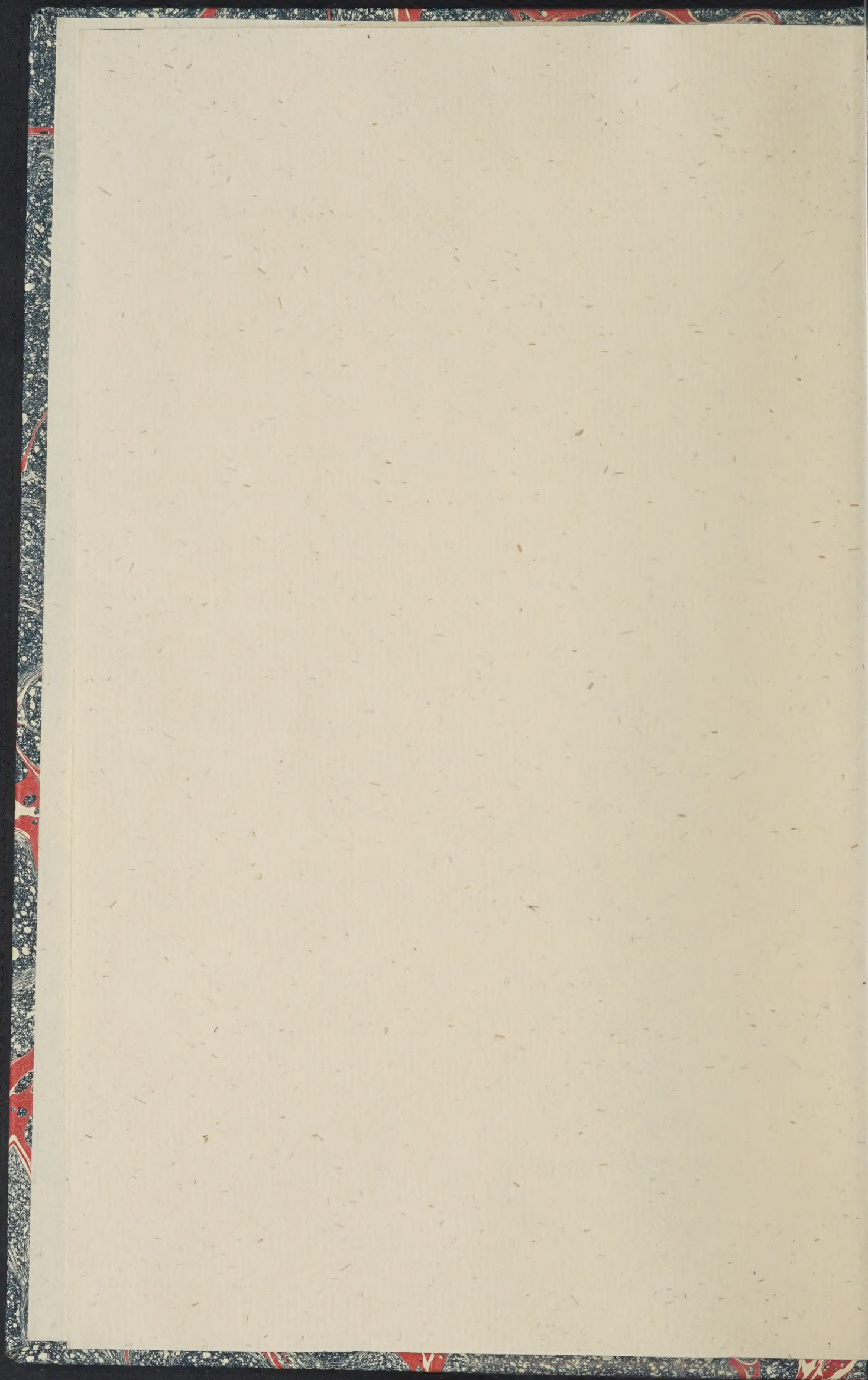












MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a resolution of the Senate, copies of the communications from Mr. Marsh, the American minister at Constantinople, relative to the case of the Reverend Mr. King.

MAY 24, 1854.—Referred to the Committee on Foreign Relations, and ordered to be printed.

To the Senate of the United States:

I transmit herewith a report from the Secretary of State, with accompanying documents, in compliance with the Senate's resolution of the 30th of January last.

FRANKLIN PIERCE.

WASHINGTON, May 20, 1854.

DEPARTMENT OF STATE,
Washington, May 20, 1854.

The Secretary of State, to whom was referred the resolution of the Senate of the 30th of January last, requesting the President "to transmit to the Senate, if not incompatible with the public interest, copies of the communications from Mr. Marsh, the American minister at Constantinople, relative to the case of the Reverend Mr. King," has the honor to lay before the President a copy of the papers called for by the resolution, and specified in the accompanying list.

Respectfully submitted,

W. L. MARCY.

To the PRESIDENT OF THE UNITED STATES.

List of papers accompanying the report of the Secretary of State to the President, of the — of May, 1854.

Mr. Marsh to Mr. Webster, (extracts and accompaniment,) August 21, 1852.

Same to same, (with accompaniments,) August 21, 1852.

Same to same, (with an accompaniment,) October 4, 1852.

Same to same, (with an accompaniment,) October 9, 1852.

Mr. Marsh to Mr. Webster, (with an accompaniment,) October 30, 1852.

Same to same, (extract and accompaniment,) November 1, 1852.

Same to Mr. Everett, (extract,) March 11, 1853.

Same to same, (extract,) March 31, 1853.

Same to Mr. Marcy, (extract with accompaniments,) May 27, 1853.

Same to same, (with accompaniments,) June 2, 1853.

Same to same, (extract,) June 17, 1853.

Same to same, (extracts with an accompaniment,) June 23, 1853.

Same to same, (with an accompaniment,) June 24, 1853.

Same to same, (extract with accompaniments,) June 24, 1853.

Same to same, (extracts) July 6, 1853.

Same to same, (extracts with accompaniments,) August 20, 1853.

Same to same, (extract,) October 11, 1853.

Mr. Marsh to Mr. Webster.

[Extracts.]

ATHENS, *August 21, 1852.*

SIR: In obedience to your instructions, under date of April 29, 1852, I sailed from Constantinople, on board the United States steam frigate San Jacinto, on the 30th day of July, and arrived in this city on the 1st day of August.

I had previously informed Dr. King, that I was instructed to visit Athens for the purpose of inquiring into the difficulties between him and the government of Greece, and had given him general advice in relation to the collection of documentary and other evidence, but as the recording officers of the courts had delayed to furnish the copies of the proceedings of those tribunals demanded by Dr. King, it was thought that some explanation of the objects of my visit might serve to expedite the progress of the inquiry, and I accordingly sought an interview with Mr. Paicos, minister of foreign affairs, stated to him that I had no diplomatic credentials to the court of Athens, and that my duties were limited to an inquiry into the facts upon which the complaints of Dr. King were founded, and the laws of Greece applicable to them, and expressed the hope that the government would not obstruct, but, on the contrary, facilitate the investigation.

Mr. Paicos professed to be gratified with the appointment of a special agent to conduct the inquiry, and to entertain an entire confidence in the just and friendly disposition of the government of the United States towards that of Greece; disclaimed for his government and himself any desire to obstruct the investigation, promised to facilitate it in case any unexpected obstacle should oblige me to ask his intervention, and invited me to confer freely with him on the subject, in an official way. By way of testing the sincerity of this proposal, I desired Dr. King to ask, in writing, an explanation of certain statements in an official letter from the minister of the interior to the minister of foreign affairs, (referred to in the report,) but as no notice was taken of Dr. King's application, I did not think it advisable to communicate further

with Mr. Paicos in relation to the matters involved in the investigation. Dr. King had collected much important documentary evidence before my arrival, and after several interviews with him, I thought it proper to give him, in writing, more definite instructions in regard to the proofs required by government, and accordingly addressed him a note, a copy whereof is hereto attached.

As the modern Greek manuscript character, in which most of the documents are written, is not readily legible, without more practice than I have had, I thought myself justifiable in employing a clerk and translator, and accordingly engaged for that purpose Mr. Baird, a young American, residing at Athens, and thoroughly competent in intelligence and character. Many of the translations have been made by him, and others have been furnished by Dr. King, and Messrs. Arnold and Buel American missionaries at Athens. All these have passed, or will pass, under my own revision, and I am myself translating the more important laws and legal documents.

I have now substantially completed the duties with which I was charged by the Department of State, and shall transmit separate reports on each of the two branches of inquiry embraced in my instructions, as soon as they can be fairly copied, and the remainder of the translations are completed and revised.

I am well aware that no great confidence is to be reposed in the results of an *ex parte* inquiry, conducted in a country where few have the courage to disclose facts, or to express opinions adverse to the known interests and wishes of their rulers; where the laws and ordinances of the government are publicly promulgated, or kept in the secrecy of bureaus, at the pleasure of those who frame them; where every public functionary is directly or indirectly dependent upon the pleasure of the crown, and, therefore, practically the instrument of its will; where the relations between the supreme government and its departments and bureaus are either totally unsettled, * * *

At the same time, it is, in my judgment, past all doubt, that the government of Greece has treated Dr. King with flagrant injustice and bad faith with regard to his claim for a compensation for his lands, and that in the criminal prosecution against him the legal tribunals of Greece * * * have been guilty of an abuse of the principles of justice, and a perversion of the rules of law, as flagitious as any that ever disgraced the records of the Star Chamber.

I do not, however, discover that the *forms* of law have been violated in this latter case, (unless it be in the virtual refusal of the Areopagus to entertain jurisdiction of a question of law, peculiarly within its competence,) although it is evident that the guaranty of the allied powers, in respect to religious liberty in Greece, the provisions of the constitution, and the plain intent and meaning of the law, have been alike violated and set at defiance, and this I believe is the opinion of every competent and impartial person in Greece.

I do not deem it within my province to express any opinion as to the course the government of the United States ought to pursue in either case; but I believe the reports will be found to embrace all the provisions of the laws applicable to them, and all the facts likely to be ascertained upon an *ex parte* inquiry. * * *

As the climate of Greece is extremely unhealthy at this season of the year, I do not deem it prudent to await further instructions at this city, and I shall remain during the interim at some convenient point, on or near the Adriatic. I propose to embark on board the *San Jacinto*, this day, for Trieste, where she will find every facility for repairing her damaged machinery; and I shall keep Mr. Miller, United States dispatch agent at London, constantly advised of my address, so that there may be no loss of time in forwarding to me any further instructions from the department, and on my return to Athens or Constantinople, as the department may direct.

* * * * *

I have the honor to be, sir, your obedient servant,

GEORGE P. MARSH.

Hon. DANIEL WEBSTER.
Secretary of State.

ATHENS, *August 5, 1852.*

SIR: The government of the United States having been informed that events have occurred at Athens affecting your property, rights, and personal safety, the Secretary of State has instructed me to visit this city, ascertain the nature of the difficulties, and inquire into all the facts connected with them. I am specially charged to ascertain what are the local laws in Greece relating to the taking of private property for public uses, and the usual mode of indemnification; what losses, if any, you have been subjected to, and what just and equitable claim you may have upon the Greek government, not only for a release of the injunction of "*non user*," or for the payment of the land taken by it, but, also, for indemnity for the losses to which you have thereby been subjected.

I am further instructed to ascertain whether your late trial was for any offence, as alleged, against the laws of Greece, and whether it was conducted in all respects in a fair and legal mode; and, also, to what extent religious toleration is allowed, and public preaching allowed, by law or usage, among those who do not belong to the established church; and, also, all other circumstances that may throw light on the subject, and enable the department to give me further instructions.

Under the first branch of these instructions I shall require copies, printed or manuscript, of all royal ordinances, constitutional provisions, and laws, relating to the taking of private property for public uses, and the mode of indemnification therefor, as well as information respecting the usages under such ordinances, provisions, and laws—copies of all written communications between you and any branch of the government respecting the taking of your land, and indemnification therefor—evidence of the extent to which you have been obstructed in the enjoyment and use of your land, whether by written injunction, or by the direct interference of the public authorities—such plans of the city and your land as will enable the department to understand the position of the latter, and the extent to which it is affected by sequestration to public uses—and evidence as to the value of the lands, and the amount of damage you have sustained in consequence of such sequestration.

Under the second branch of my instructions I shall need full copies of the entire record of the proceedings against you in the criminal and appellate courts, including the indictment, the legal opinions of the courts, the sentence, and the testimony, as far as the same was taken in writing, or if the witnesses testified orally, then notes of their testimony—copies of all royal ordinances, constitutional provisions, and laws, touching the subject-matter of the accusations against you, and the religious liberty secured to dissenters in Greece—proof of any unfairness, illegality, or irregularity in the proceedings—evidence as to the extent to which religious toleration is allowed, and public preaching permitted, by law or usage, in Greece, among those who do not belong to the established church—and information respecting any other circumstances that may throw light on the subject. You will, in my judgment, require the aid of counsel, learned in the laws of Greece, in making these inquiries, and I earnestly recommend to you to take the advice of such in complying with the requisitions of this letter. I consider myself authorized to pay the necessary expenses of books, copies, plans, translations, and clerk hire, but do not think myself at liberty to undertake to compensate counsel. I shall be at all times ready to confer with yourself or your counsel, and will make from time to time such further suggestions as shall occur to me in the progress of my inquiry.

I am, sir, yours respectfully,

G. P. MARSH.

Rev. Dr. JONAS KING.

Mr. Marsh to Mr. Webster.

ATHENS, *August 21, 1852.*

SIR: Under that branch of my instructions which directs me to "ascertain what are the local laws of Greece relating to the taking of private property for public uses, and the usual mode of indemnification; what losses, if any, Dr. King has been subjected to; and what just and equitable claim he may have upon the Greek government, not only for a release of the injunction of *non user*, or for the payment of the land taken by it, but also for the losses to which he has thereby been subjected," I have the honor to submit the following report:

In the year 1828, the Rev. Jonas King, an American citizen, arrived in Greece, as one of the Philhellene agents, to assist in relieving the Greeks from famine and distress, consequent upon their struggle for independence, and, in the course of the following year, he married and took up his residence in that country. In the year 1830, he purchased two valuable and eligibly situated parcels of ground at Athens, lying contiguous to each other, and containing together nearly ten thousand (common or small) peeks, Greek measure, or about eighty thousand square feet English.

Both before and after this date, large purchases of real estate were made at Athens, and elsewhere in Greece, by persons not then owing allegiance to that State, and who never afterwards contracted the obli-

gations of citizens or subjects. These purchases were made under existing constitutional provisions; they were at all times encouraged by the Greek government, which was desirous of strengthening itself by attracting to its territory the capital, the enterprise, and the intelligence of European and American emigrants; and the validity of the titles so acquired has never been disputed, but has, on the contrary, been constantly recognized by the Greek government, which has moreover repeatedly admitted the title of Dr. King, and his right to an indemnity for his lands sequestered by government to public use.

By an arrangement between Great Britain, Russia, and France, founded on stipulations previously entered into by those powers, and which was accepted by Greece, Prince Otho, of Bavaria, was raised to the throne of Greece in 1832; but, although a new constitution had been promised, in various public manifestos, none was promulgated until the royal assent to that of 1843-'4 was extorted by a popular movement, and, in the meantime, King Otho, in fact, ruled with absolute and despotic power.

The three constitutions of Ephidaurus, Astros, Troezen, under which Greece was governed at the time of Dr. King's arrival, and until the accession of King Otho, agree in securing to all foreigners resident in Greece the same civil rights as to native citizens, and they all provide alike, that each "contributes to the charges of the State in proportion to his fortune."

These constitutions were not formally revoked on the elevation of King Otho to the throne, and able Greek jurists have held that, so far as their provisions were reconcilable with a monarchical form of government, they remained legally in force until superseded by the constitution of 1844.

Under these constitutions, Dr. King had acquired certain rights, and in the case of other foreigners, the clauses above cited have been successfully appealed to, as securing them against the violation of similar rights, and particularly against a forcible deprivation of property like that which Dr. King has suffered.

The constitution of 1844, article 3, declares that "citizens are such as have acquired, or shall acquire, the character of the citizen according to the laws of the State."

Of the provisions of those laws Dr. King has not availed himself. From the period of his establishing himself in Greece, his residence has been in the character of a missionary in the service of the American board of commissioners of foreign missions. He does not claim the *political* rights of citizenship, nor are these allowed to him by the constitution or government, but I do not discover that the constitution or laws make any distinction between citizens and resident foreigners in mere matters of *civil* right.

By a royal ordinance, dated at Nauplia, January 30, (February 11,) 1834, the seat of government was ordered to be transferred to Athens, and a plan of the new city, prepared by Messrs. Cleanthes and Schaubert, government architects, was recognized as authoritative, and engraved and published, but was, immediately after, abandoned. This ordinance, although belonging to a class of laws which, by a royal decree of 1833, were to be published in the State gazette, (Ephemeris,)

did not appear in that journal, is not contained in any edition of the laws of Greece, and in fact is believed never to have been printed.

This plan corresponded in its general features with a subsequent plan submitted by the architect, Klewze, and adopted, as it is said, by royal ordinance. Klewze's plan, with some modifications, is understood to be still in force, but the government has not thought it convenient to publish either the plan or the ordinance adopting it, though a few lithographed copies are said to have been prepared for the private use of the members of the government.

By a third plan, adopted by royal ordinance, and supposed to be dated in 1835, (being that referred to in the letter of the minister of the interior of June 1, 1844, hereto annexed, and marked W, and in that of the minister of foreign affairs, dated November 22, (December 4,) 1850, hereto annexed, and marked Y,) Dr. King's land was set apart as a site for a national church. This plan also was buried in the national archives, and has never been published.

A copy of that portion of the plan of Cleanthes and Schaubert, which embraces Dr. King's land and the neighboring streets and squares, is hereto annexed and marked A; but the small scale of the plan renders it impossible to indicate the sight of his ground with any precision. The plan published by Altenhoven, in 1837, hereto annexed and marked B, though not of authority, agrees in a general way with that of Klewze, and both are entirely different from that of Cleanthes and Schaubert, in regard to the location of the royal palace and other public edifices, and the extent and boundaries of the public squares and gardens, as well as in numerous other details, of much importance as regards the value of the lands affected by them.

The form and position of Dr. King's land is indicated approximately by the *red* shading on Altenhoven's plan, (B.) The plan marked C, which is copied from that of Klewze, exhibits the manner in which the land would have been affected had that plan been carried out with respect to the opening Athena street, and the square of the people, market, or agora.

The several parcels bounded by *black* lines compose his property, but the scale of the plan (one to twelve hundred) is too small to enable any one to determine, with the necessary precision, the boundaries of the ground that would remain to him after the opening of the square. This plan, as before observed, was never made public, and Dr. King declares that he was unable to obtain even such a copy as this until 1848, when he procured one, under a pledge that he would not disclose the source from which he obtained it.

According to the plans of Cleanthes and Schaubert, Klewze and Altenhoven, the great street of Minerva (Athena) passes through the centre of Dr. King's land, and almost the whole of the residue is taken up either by a proposed public garden, or by the open square, called the bazaar or market, (agora,) or square of the people, and so far as his property is concerned they differ only in the greater or less extent to which it is included in the limits of these public places. They all, however, leave him something, whereas the plan by which the great national church of the Saviour was to be built on his grounds appears to have taken the *whole* of his property.

The ordinance for the removal of the seat of government to Athens refers to certain engagements of the commune (——) of Athens. These stipulations were entered into by the inhabitants of Athens at popular meetings, in which Dr. King and the other resident foreigners in general took no part, in September and some earlier months of 1833, when the corporation of Athens, which city had but recently been abandoned by the Turks, is believed to have had no legal existence. They all referred to the proposed plan of Cleanthes and Schaubert, which, so far as concerned the location of the public edifices, squares, and gardens, (a matter principally in view in all these arrangements,) and many other important details, was, immediately after the removal of the seat of government, superseded by that of Klewze.

By a royal ordinance of 27th December, 1833, (8th January, 1834,) communes or municipalities (*demi*) were decreed to be established, and by §6 of article 18, there was imposed upon these bodies the duty of "the construction and maintenance of communal roads and bridges," but no provision was made in this law for the indemnification of the proprietors of lands taken for highways, nor is there any mention of public market places or other squares.

The king was to define the territorial limits of each *demus*, which were to be indicated by stone monuments; but when this was done, with respect to the *demus* of Athens, if ever, does not appear. At least the government gazette, (*Ephemeris*), in which all laws and public decrees were, by royal ordinance, to be published, contains no demarcation of the limits of that *demus*, and there is, therefore, apparently, no legal certainty that the property of Dr. King, which lies in the *new* town, comes within the jurisdiction of the *demus* of Athens.

The material provisions of this law will be found in the paper annexed, marked D.

In the execution of the plan of the city, and its successive modifications, various new streets were laid out in the part of the town already built upon; and the great street of Minerva (*Athena*) was opened from the portico of Hadrian, in the old town, to the southern line of Dr. King's land in the new, (the buildings within its limits being demolished,) but was *never opened or carried across that parcel*; and neither the street nor the square of the market was ever laid out upon it by survey, or marked by visible boundaries; nor was any plan, survey, or description of the limits of the land to be taken for those purposes ever communicated to Dr. King, or publicly promulgated.

In 1834, a royal ordinance appeared in the gazette, decreeing the erection of a grand national monumental church, to be called the church of the Saviour; and, at some period not precisely known, but as believed in 1835, Dr. King's land was selected, as has been already noticed and will be more fully seen hereafter, as a site for the erection of this edifice. In this fact we find the probable reason of the abandonment of this part of the previous plan, and it is supposed to be for this cause, that the street of Minerva and the market square were not opened, or laid out, upon the land in question.

By §1 of article 2 of the above mentioned ordinance for removing the seat of government, it was provided that all lands set apart for *building national edifices thereon*, by the plan of Cleanthes and Schaubert, and

thereon noted, should be paid for out of the national treasury, at the rate of twenty lepta the square peek.

If this be the common peek, (of about two and an half feet English,) the price fixed would be equal to five and one-third mills per square foot; if the royal peek, (French metre,) to about three mills per foot. This provision could not apply to the land of Dr. King, so far as the price was concerned, because his ground was not noted upon the plan of Cleanthes and Schaubert as a site for any public edifice, and was intrinsically more valuable than any of the sites so designated; but it is important to be noticed, because it clearly shows that the national treasury, and not the demus, was to indemnify the proprietors of lands taken for public buildings.

By §6 of the same article, the ground required for streets and squares was to be ceded by the owners to the demus; and whenever the remaining portions were too small (less than two hundred square peeks) to allow the proprietor to build on them in conformity with the regulations for that purpose, those portions also (called *temachia*) were to be ceded to the demus; and the demus was to agree with the owners of the lands so taken (whether for streets or as *temachia*) as to the amount of the indemnity, and to assume the burden of its payment. The opening of the streets and squares was to be undertaken and completed *forthwith*.

By §8 proprietors of lots were to build, according to certain regulations, within six years, or surrender their grounds (at the rate of eighty lepta the peek, or at the price which should be fixed by a new appraisal, as the proprietor should elect) to any purchaser who would undertake to build; and in case of final failure in this respect, the demus might take the land, to be disposed of and occupied according to the plan.

So far as can be judged from the plans on the very small scale on which they are constructed, Dr. King would have two or three *temachia*, as well as some larger parcels, remaining, if the street and square were opened as proposed; and he has repeatedly applied for leave to build, or for a compensation in money, or by an assignment of unoccupied lands, but his applications have been uniformly refused or disregarded.

In this ordinance the demus of Athens is generally treated as a legally existing corporation; but it appears, by the third article of the same ordinance, that the *demi* had not yet been defined and organized, and I refer to these provisions of the law, not as having any legal force, but because they have been sometimes appealed to as fixing the amount of the indemnity to be paid to landholders by the government, in all cases, at the nominal rate of twenty lepta the peek.

The whole of these provisions were applicable to the plan of Cleanthes and Schaubert alone, and upon the abandonment of that plan, they ceased, in my opinion, to be binding, if, indeed, they ever had any validity, which is not admitted. By the royal ordinance of 1833, future laws were to take effect from their promulgation in the *Ephemeris*, or state gazette. The ordinance now under consideration never was so promulgated, and in fact the government has, in several instances, paid many times the rate mentioned in that ordinance, for

land occupied by the royal palace and gardens, and other public structures.

The public authorities not having opened the street or square, or made any arrangement respecting the indemnity, Dr. King, on the 28th January, (9th February,) 1835, addressed to the minister of the interior a letter, a translation of which is hereunto annexed, and marked E. To this letter no written answer was returned, but Dr. King declares that the minister repeatedly promised a fair indemnity.

In the following season, Dr. King opened ditches about the unfenced portion of his land, to mark its limits, and on the 13th of September, 1835, he received, from the head of the police—an officer appointed by the king, and not by the municipality—an order, a copy of which is annexed and marked F.

The ditches were filled up under the direction of the head of the police, but the intention of laying out the square of the people, (market-place, or agora,) expressed in the order, was never carried into effect, the ground having been now selected as a site for the church of the Saviour.

On the 12th of November, 1836, a royal ordinance was promulgated, containing various provisions respecting the carrying out of the plan of Athens, and the indemnity to be allowed to landholders. Translations of the provisions of this ordinance, material to the present inquiry, will be found in the paper hereto annexed, marked G.

On the 16th of January, 1837, Dr. King addressed to the demarch of Athens two letters, copies of which are annexed and marked respectively H and I. Of that marked H, no notice was taken; but by way of answer to that marked I, Dr. King was told, as he declares, that nothing would be done under the proclamation referred to therein, and in fact it does not appear that any measures were ever taken in accordance with it, either with respect to Dr. King or any other landholder. A translation of this proclamation is hereto annexed, marked J.

On the 14th, (26th) of June, 1837, Dr. King addressed to the president of the council of ministers, secretary of state for foreign affairs, a letter, a copy of which is annexed, and marked K. This letter being laid before the king, a report was ordered and presented on the 23d of June, (5th of July,) 1837; a translation of which is annexed, and marked L. Upon this report, the king, on the 26th of June, (8th of July,) 1837, made the decree annexed, and marked M, and the same was communicated to Dr. King, together with a letter from the secretary of state, (*misdated* 3d for 30th of June, (12th of July,) 1837;) a translation of which is annexed, and marked N.

Dr. King declares that upon application to the authorities for payment of an indemnity, it was refused, and that he could obtain from the architect of the city no information on the subject of his lands, except, as afterwards stated, that they were all taken for the site of the church of the Saviour, and he explicitly denies that he ever was a party to any agreement with the demus respecting the taking of his ground, or an indemnity therefore.

It has been observed that neither the plan of Klewse nor the decision to build the church of the Saviour on Dr. King's land, was ever officially promulgated; but on the 3d, (15th) of April, 1838, a new royal

ordinance, providing for the erection of this church, *and declaring that the site for it had been already selected*, was signed and published not long after in the Ephemeris. A translation of this ordinance is annexed, and marked O.

Having been informed by the government architect that it was resolved to build this church on his grounds, Dr. King, on the 12th of September, 1838, applied to the secretary of the home department for information on this point, by letter; a copy of which is annexed, and marked P; but no notice was taken of the communication.

Matters remained in this state for more than two years, Dr. King being occasionally informed by the ministry, as he states, that the government was about to adopt a general plan for the relief of all the claimants, but as nothing was done, he began to make preparations for cultivating the lot, but was immediately prevented by the head of the police, a royal officer, who, on the 21st of January, 1841, served upon him an injunction; a translation of which is annexed, and marked Q. The new plan therein referred to was never published, and nothing is known concerning it.

To this notification Dr. King replied by two communications; copies of which are annexed, and marked, respectively, R and S.

A few months after this, Dr. King asked the intervention of Mr. Perdicaris, consul of the United States at Athens, and that officer presented his claims to the Greek government, by communications dated, respectively, March 15, June 2, and May 21, 1842; to none of which was any answer returned; and he further urged them, without effect, in various personal interviews with the minister of foreign affairs, from whom he received only evasive replies.

On the 18th of March, 1844, the constitution was completed, adopted, and sworn. The 12th clause of this instrument declares that "none is deprived of his property, except for public necessity duly shown, when and in such manner as the law prescribes, indemnification being always first made."

On the 22d of May, (3d of June,) 1844, Dr. King applied to the demarch of Athens, by a note, a copy of which is annexed, and marked T, for leave to enclose a parcel of ground belonging to his original purchase, and adjoining a portion which he had fenced in as early as 1831, and called Philadelphia; and it is proper to add, that the name Philadelphia has since embraced the entire property, and that nearly the whole of both parcels is taken for public use by all the plans.

To this petition Dr. King received the reply annexed, dated 25th of May, (6th of June,) 1844, and marked U.

On the same 23d of May, (3d of June,) 1844, he addressed to the secretary of state for the home department a note, a translation of which is annexed, and marked V.

The minister replied by a letter dated 1st, (13th) June, 1844, a translation of which is annexed and marked W. This letter, it will be observed, does not renounce the claim of the government to appropriate the land to the purpose therein named in case of non-payment of the indemnity, but merely suspends its execution, and authorizes Dr. King "to make use of it" for the time being.

After the expiration of the period limited by the letter of Mr. Londres,

Dr. King proceeded to enclose the remainder of his lot with a stone wall, and though not permitted to erect permanent buildings upon it, he has, by himself and his tenants, ever since occupied it.

In 1848 he renewed his application for leave to build, and was allowed to erect a small house, upon entering into a written stipulation that he would not claim any indemnity *for the building* when the land should be occupied as a public square; and there was a like application, stipulation, and permission, in behalf either of Dr. King or a tenant of his, in 1850.

A copy of one of these petitions is annexed and marked X. On the 12th of November, 1850, Mr. Diomatari, consul of the United States at Athens, presented Dr. King's claims to the minister of foreign affairs, and received a reply dated 22d November, (4th December,) 1850; a translation of which is annexed and marked Y. The 4th article of the royal ordinance of 1836, therein referred to, provides that the boundaries between lots lying on the public streets shall be so arranged that every proprietor shall receive a proportional share of front, and this arrangement constitutes the "modifications" referred to in the first paragraph of the minister's letter. Such proceeding was necessary if Dr. King was to be compensated in part by the neighboring proprietors, according to section 22 of the ordinance of 1836, (G;) but the assertions of this letter constitute the only proof that such instructions to the engineer officer were ever given, and there is no reason to believe that, if given, they were ever carried out.

On the 6th of December, 1850, Mr. Diomatari renewed his application in behalf of Dr. King; and after some further unimportant communications on the subject, the minister of the king's household and of foreign affairs on the 18th, (30th) of April, 1852, addressed to Dr. King a note, with a report from the minister of the interior, by way of "definitive answer" to his claims. Translations of this note marked Z, and of the report marked AA, are hereunto annexed.

On the 5th of August, 1852, Dr. King addressed to the minister of foreign affairs a letter, a copy of which is annexed and marked BB; but no reply has been hitherto received, and Dr. King declares that, to the best of his knowledge and belief, no such proceedings as are supposed in the "definitive answer" respecting the indemnity ever took place; and he positively denies that any such orders or proceedings were ever communicated to him.

Dr. King declares that, in consequence of the repeated references of the government to the demus, he has frequently applied to the officers of that corporation for compensation, and that this has been constantly refused, and the reason assigned that it was the duty of the State and not of the demus to pay the indemnity. The grounds on which this opinion is founded doubtless are, that all previous proceedings being invalid, the demus was under no liabilities but those created by the ordinance of November, 1836, (G;) "that under that ordinance the demus had never become liable, no street or square having been opened or laid out upon the land, and finally that the government had appropriated it to a strictly national purpose, with which the demus had no concern. Indeed it is said that few native proprietors have received any indemnification at all for lands taken for public purposes, though

the government has compensated many resident strangers who have enjoyed the benefit of foreign protection.

To complete the history of the facts, and of the legislation applicable to the case, it remains to be stated that on the 25th January, (6th February,) 1852, a law was promulgated exempting the whole of the income of the *demi*, (and they have no other resources,) except one-fifth of their revenue, from legal process, and thus virtually depriving creditors of all effectual remedy against them. A translation of this law is annexed and marked CC.

From the facts above recited, as well as from the repeated admissions of the government in the course of the correspondence, it is evident that Dr. King has been obstructed in the enjoyment of his rights to the free use and disposal of his land, and that he is entitled not only to damages for this obstruction, but to a formal release of the land from the injunctions which have been laid upon the exercise of his rights of property over it, or to a compensation for its value; and the only remaining questions are: What is the amount of the indemnity he is entitled to claim, and is this indemnity to be sought from the national government, or is he confined to his legal remedy against the *demus* or municipal corporation of Athens, and the proprietors of the lands adjacent to his own?

The amount of indemnity will, in any event, be considerable, although I cannot concur with Mr. Diomatari in his estimate of the value of the property. For many years after the removal of the seat of government to Athens, rents were enormously high, and if Dr. King had been allowed to build upon his lands, he would have realized a very large income from a very moderate investment.

In point of fact, he is believed to have derived hitherto no pecuniary advantage from his purchase, though not deprived of the naked possession of it, and I have no doubt, from an inspection of the property, as well as from the statements of Dr. King, and information from other reliable sources, that the cost of the preparations he has occasionally made for building, but has been forbidden to employ, together with the expense of the walls of enclosure, and of the insignificant buildings which he has been allowed to erect, has exceeded the income he can have derived from rents and cultivation. For two years or thereabouts, a part of the ground was occupied as a riding school, and for this period a rent of about one hundred and fifty dollars per annum was received, but with this exception, the income from the land is believed to have been but nominal. The profits which Dr. King might have derived from a judicious investment of capital in building, though they would no doubt have been very large, are, in my opinion, too uncertain and conjectural to furnish a safe criterion for estimating the damages to which he is entitled for the obstruction of his rights to the use and enjoyment of his property, and I think that interest upon the actual market value of the land would be a fairer rule. The rate of interest in Greece does not appear to be fixed by ordinance or statute; and from twenty to fifty per cent., and even higher rates, are credibly stated to have been currently paid at Athens for money to be invested in building, and that with advantage to the borrower, in consequence of the enormous rents paid for dwellings and shops. By a sort of recognized

common law, however, twelve per cent. per annum is considered to be the legal rate, though this is said to be much below the interest usually, in fact, paid. The value of the land, therefore, becomes an important inquiry, as well with reference to Dr. King's claims for damages for the obstruction of his rights of property, as to the compensation to be paid, in case the government shall elect to take the ground for public use, instead of releasing the injunction and allowing the proprietor the free use and disposal of his land.

The price of land has fluctuated a good deal at Athens and elsewhere in Greece, and at the capital it was higher ten or twelve years since than at present. The property in question lying upon one of the principal streets of the city, near public squares and the business part of the town, occupying an elevated position, and commanding a good and unobstructed view of many of the finest ancient monuments and other most interesting localities of Athens, appears to be equal in value to any site in the city, except, perhaps, grounds for shops in some of the more crowded parts of the town; and its selection as the site of the great national monumental church of the Saviour, shows, that in the opinion of the government and its architects, it was the most eligible position remaining unoccupied. Parcels of ground, apparently not more valuable, are stated to have been sold at eight, fourteen, and sixteen drachmas, (the drachma is equal to one-sixth of a Spanish dollar,) the peek, and I have seen contracts of sale in which the consideration was stated, (and as is believed, *bona fide*,) at much higher rates. A large building lot adjacent, or nearly so, to Dr. King's land, and apparently possessing no advantage over it, was sold in the course of the last year, when all material interests at Athens were in a depressed and embarrassed state, at fourteen drachmas the peek, at public auction, and though the sale was not carried into effect, and the property is reported to have been afterwards purchased at eight drachmas, yet it is believed that there have been periods when Dr. King might have disposed of his land, if not embarrassed by the injunction, at a price at least as high as the auction sale above mentioned.

The actual market value of the land at different periods would form a somewhat different inquiry, and until the principle is settled, whether Dr. King is entitled to the present value only, to the value at the time his rights were first obstructed, or to the highest price for which the lands his could have been sold at any time in the interim, as Dr. King contends, it seems superfluous to attempt exact estimates, and I content myself with submitting the data I have been able to collect on this point.

The Greek government will perhaps, contend, as it has done in other cases, that it may appropriate the land to national uses, allowing an indemnity of twenty lepta only the peek, in virtue of the before mentioned alleged agreements of the inhabitants of Athens and the royal ordinance founded in part thereon, but as has been already argued, those agreements are believed to be void, both because those inhabitants were incompetent to act in a corporate capacity, and because they were entered into solely with reference to the plan of Cleanthes and Schaubert, which was never carried into execution.

Doctor King positively denies that he was ever party to any agreement whatever on the subject, and there is no evidence, or so far as is

known, pretence, that he was so; the nominal rate of twenty lepta the peek, at which an arbitrary government, in the plenitude of its power, resolved to appropriate to itself the property of citizens, applied only to certain sites noted on the plan of Cleanthes and Schaubert, and the government has compensated several claimants, to whom that rule was as applicable as to Doctor King, at far higher rates. The government itself has treated those agreements and the subsequent ordinance of 1834, as valid or invalid, according as its interest or convenience dictated.

It has appealed to them as binding, in regard to the rate of compensation to be allowed for grounds taken as the sites of national edifices, but it refuses to be bound by its own stipulations that the national treasury should make that compensation, and shelters itself under the ordinance of 1836, which throws upon the demus the liability to indemnification for land taken for streets and *squares*, because, as a matter of convenience, most public buildings have more or less of an open space or square around them. It is believed, however, that it has not been able to protect itself under those agreements and that ordinance, in *any* case of a claim by a foreign resident.

In case the Greek government shall be held directly responsible for the indemnity, there does not appear to be any legal provision for ascertaining the amount by appraisal or otherwise, and it must be matter of negotiation and agreement, but if the sole liability be considered as resting on the demus and the neighboring land holders, it would seem that the value of the land taken must be ascertained in the manner provided by that ordinance.

The remaining question, the inquiry merely, whether Dr. King is entitled to demand indemnification from the royal government, or whether he must seek his remedy against the unmerciful corporation of Athens and the neighboring proprietors alone, by appraisal, and, if necessary, by subsequent process in the ordinary judicial tribunals of the country, is one of greater magnitude, difficulty, and delicacy, and I proceed to state the conclusions at which I have arrived, with all the diffidence appropriate to an *ex parte* investigation in a case involving the construction of foreign laws, and an examination into the relations between the different branches of a foreign government.

I shall first consider the question of the liability of the demus to compensation, and of the neighboring landholders to contribution.

The alleged undertaking of the commerce of Athens, before its legal incorporation, and the royal ordinance founded thereon, being rejected as a ground of liability of the demus, both because the commune was incompetent to enter into such undertaking, and because the condition upon which it was to become effectual, namely, the adoption of the plan of Cleanthes and Schaubert, had failed, there remain upon the demus and the neighboring proprietors no obligations but such as are created by the royal ordinance of November 12, 1836. (G.)

It is important here to notice, that the original interference with Dr. King's proprietary rights was the act of the general government, through a royal officer, in 1835, before the ordinance of 1836, or the adoption of the constitution, and at a period when there was no existing law imposing upon the demus any liability to indemnification for

lands taken for streets and public squares. At this time, then, the responsibility could rest nowhere but upon the national government, and it may well be questioned whether the government could exonerate itself from this responsibility, and shift it upon the shoulders of a local corporation, by subsequent legislation.

But however this may be, it is evident that the liabilities created by this ordinance are founded on a consideration of the benefits accruing to the people of the demus from the use of the public streets and squares as highways and market places, and to the neighboring proprietors, from the opening of public ways and places in the vicinity of their lands.

The ordinance of 1836, (G.) section 22, concerning indemnities, provides a compensation for those who are deprived of the whole or a part of their ground "by the *opening* or widening of a street," &c., and the liability cannot be considered as attaching until the benefits accruing from such openings are realised, or at least until both the public and the proprietor are definitively and distinctly informed, by due authority, what portion of his lands is to be thrown open to general use.

The mere intention of the general government, however positively expressed, to open a street or square through the lands of an individual, (for the demus of Athens has no power to lay out or open streets or squares, the government having reserved that authority to itself,) can certainly impose no liability on the demus, and still less on the neighboring landholders. The word translated *opening* answers precisely to that English word, and in the opinion of able Greek jurists and scholars, it can here have no meaning, technical or figurative, not equally belonging to its English equivalent.

There has never been upon the land in question any actual opening of street or square, or any entry for that purpose, or so far as is known ever for a survey. One portion of it has been enclosed by a substantial wall for more than twenty years, and the residue for eight years; no lines of street or square were ever marked or otherwise designated upon or near the land; no monument was ever erected to inform either the proprietor or the public what were the boundaries of such street or square; no descriptive survey was ever published or made known to the proprietor or the demus, or, so far as there is reason to believe, recorded or even drawn up, and the only known designations of such street and square are the vague indications of plans on a miniature scale, and which were finally abandoned or never made public, and the yet more uncertain descriptions contained in the official notices, by which the owner has been restrained from the use of his property.

It is plain, then, that there never has been any taking, opening or setting out of the land required for the street or square in question, nor has the demus any power over the subject. The law creating the demotic corporations imposed no liability to indemnify the owners of lands taken for highways. The ordinance of 1836 does not empower the demus of Athens to lay out streets or squares in that city. This is a matter exclusively within the control of the government of Greece, and neither the demus nor private individuals can compel the government authorities to act. The law provides no mode by which a landholder, whose grounds are to be occupied by streets or squares, can

oblige the public architects or surveyors to set out those streets or squares, or in any manner to define the limits of the land which may remain to him.

The government, not the demus, has signified its intention to occupy, sometimes, a large part of Dr. King's land for a street market place, at other times, the whole of it, as a site for a great national religious edifice. This intention has never been carried out; so far as the location of the street and public market place are concerned, it has never been even expressed with any such legal certainty as to enable the landholder or the demus to know what portion of his land is taken and what left. Dr. King cannot compel the government either to execute or to renounce its intention, and it is absurd to say that under the provisions of any existing law these facts can give him any legal claim against the demus, which hitherto is a stranger to all the proceedings, as a review of the history of the case will plainly show.

The first act of the government or its officers, specially affecting the land of Dr. King, appears to have been in 1835, when the government engineers, in opening the great street of Minerva, stopped short at the southern boundary of the tract in question, although the head of the police, an officer appointed by, and responsible only to, the king, had formally notified Dr. King (F) that he should "begin to make" the square of the people (market place or agora) *the next day*. In execution of this purpose, this officer filled up the ditches which the proprietor had opened to mark the boundaries of his ground; but it does not appear that he made any other entry upon it, and the intention of opening the square was forthwith abandoned, for the reason, no doubt, that it was now determined by the government to occupy the ground as a site for the church of the Saviour.

The next authoritative document, in order of time, is an order, not from the municipality or any of its officers, but from the king himself, under date of 26th June, (8th July,) 1837, (M,) and this neither states the particular purpose to which the land was to be applied, nor defines the quantity to be taken. The note of the minister of the interior, (M,) founded upon the royal order, is equally vague in its description of the land required, and the supposed order to the governor of Attica remained a dead letter, for the reason, doubtless, that the laws of Greece did not impose on that officer any duties in relation to the matter.

The royal ordinance of 3d (15th) April, 1838, (O,) expressly states that the site for the great national church of the Saviour had been already selected, and it is not denied or questioned that Dr. King's land constituted a part of the site referred to.

The letter of the head of the police of January 21st, 1841, (Q,) shows that the purpose of occupying Dr. King's ground for the church of the Saviour, if indeed ever abandoned, (which there is no reason to suppose,) had been resumed, and there is no evidence of any further action on the subject by any department of the government until the 25th May, 1844. The letter of the demarch of that date (U) shows that it was not then purposed to occupy the ground for a street or market, and the letter of the minister of the interior of June 1st, 1844, (W,) distinctly notifies the proprietor that his entire property was taken

for a national purpose, although it refers him to the demus for payment of his indemnity, and permits him, in case of non-payment, to resume the "use" of his lands. I say, for a national purpose, because the royal ordinance of 1834 and 1838 make the intended structure a national church, and the ordinance of 1836 imposes upon the demi no obligation to pay for the sites of such, or for the grounds pertaining to them.

There is, then, no proof that the public authorities ever took, or, after the abandonment of the plan of opening the square of the people, ever intended to take the land in question, for a street, a market place, or for any other purpose contemplated by the ordinance of 1836, and the obscurity which is thrown over the case, by the confusion of the names applied to the proposed square, evidently arises from the persevering attempts of the government to evade its liability for compensation for land employed for strictly national purposes, by putting forward the demus and the adjacent proprietors as the responsible parties, although it is clear that the ordinance of 1836 imposes neither upon the demus, nor the proprietors, any liability, except for land of which the owner is deprived by the opening of streets and public squares—a liability imposed in consideration of advantages which would result to the people of the demus and the proprietors, from the opening of thoroughfares and market places, but which certainly would not flow (at least not in an equal degree) from the erection of monumental structures.

The view of the case here taken is so obvious, and the absurdity of contending that a designation upon a plan hidden in the archives of the government can constitute an "opening" to public use of lands which have always been enclosed is so manifest, that not only the officers of the demus but the public journals have seized upon it as a complete answer to Dr. King's claim to an indemnity from the demus; and several lawyers, reputed to be among the ablest in Athens, specially consulted by Dr. King on this point, have given it as their unequivocal opinion, that nothing short of an appropriation of land to public use by an actual throwing open, and a consequent deprivation of the owner's possession of his property, can create a claim against the demus or the neighboring proprietors.

To these considerations may be added the fact, that the law of 1852 (CC) virtually takes away any remedy against the demus, by exempting from process all its revenues, except one-fifth of its income, its only means of discharging any extraordinary claims against it.

The "definitive answer of the minister of the interior" (AA) assumes the ground that Dr. King ought to have taken the initiative, and declares that all preliminary steps to obtain an indemnity take place at the instance of the landholder.

It is thought that this view of the case is quite without foundation, sec. 26 of the ordinance of November 12, 1836, (G,) evidently implies the contrary, for it supposes an application on the part of the demus to the landholder to name an appraiser; certainly no appraisement could be had until the limits of the ground taken were precisely known. No neighboring proprietor could be called on for contribution until his proportion was fixed, and both the demarcation of the limits, and the arrangement of the contributinal proportions, were the work of officers,

not of the demus, but of the crown. And so the government, during the whole period, has evidently understood the law.

The king himself, as well as his ministers, have virtually declared, that all preliminary measures belonged to the government, and assumed the responsibility of their execution, and no published or known law or ordinance obliges or authorizes the landholder to take any steps in reference to them.

In order to anticipate any objection to the foregoing argument, which might be drawn from the occasional interference of the demarch with Dr. King's proprietary rights, it is proper here to observe, that for all purposes connected with the charge and superintendence of public ways and squares, the officers of the demus are royal, not municipal organs.

The ordinance establishing the demi, § 15, decrees as follows: "every demus has the right and the duty, under the supervision of the government (a) of administering according to existing laws, the inferior local and rural police within the limits of the demus," &c.; and further, the powers and duties enumerated in paragraph (a) are exercised by the demi in the name, and according to the orders of the supreme authority of the State. The ordinance of December 3, 1836, concerning the demotic police, provides, § 1, that "the police is exercised by the demi, by special organs in the name, according to the order and under the supervision of the government, in conformity to the laws in this behalf provided. § 2. The demotic police is divided into administrative and judicial. § 3. The organs legally charged with the execution of the demotic police are (a) the demarch," &c.

Subsequent provisions of the same law place the charge and superintendence of the highways and squares in the hands of the officers of the demotic police.

I conclude, therefore, that Dr. King has no legal claim upon the municipality of Athens, or the neighboring proprietors, and that unless he can establish a liability on the part of the Greek government, he is without remedy.

This abstract right to an indemnity is admitted by the government itself in almost every one of its official communications on the subject, and the government has taken upon itself, as is alleged in those communications, to receive the payment of that indemnity through one of its inferior branches, the demus of Athens, but it has utterly failed to show that that branch was under any legal liability to comply with its orders to that effect.

It has been sufficiently shown that, by the informal proceedings of the unincorporate inhabitants of Athens respecting the abandoned plan of Cleanthes and Schaubert, and the unpublished ordinance of 1834, no liability on the part of the demus was created, and the government is necessarily responsible for any obstruction of Dr. King's rights by its agents, unless it has divested itself of that responsibility by the ordinance of November 1836, (G,) which, as is thought to be already shown, did not transfer that liability to the municipal corporation of Athens.

As before noticed, the first proved interference with Dr. King's enjoyment of his lands was the act of the head of the police, a royal officer in 1835, and of course before the ordinance of 1836. This officer

entered upon the land and filled up the ditches opened by the proprietor to mark its boundaries, but desisted from opening the square of the people, because the ground had been selected as the site of a national structure. The ordinance of 3d, (15th,) April, 1838, (O,) reviving the ordinance of 1834, declares that the site of this church had been selected, the government architect in 1838 notified Dr. King that his lands were to be taken for that purpose, and the secretary of the home department, when inquiry was made of him by Dr. King on this point in 1838, (P,) did not dispute the fact, which indeed is not now, and never has been questioned. In 1841, the head of the police forbid the claimant to build upon his land "by the church of the Saviour" (Q.)

In 1844, the demarch of Athens, acting in this as a national police officer, treats the supposed square as belonging to that national edifice (U.)

On the 1st of June, 1844, the minister of the interior formally notifies Dr. King, that by the plan of the city his land would be taken for the church of the Saviour, and although the claimant was authorised to make use of his property in case of non-payment of the indemnity, yet in 1848 the police refuses to allow him to build, unless under a stipulation that he would claim no damages for the *building*, when his land should be taken for public use; the minister of the interior, in 1850, (Y,) informs him, that according to the plan of the city, he cannot dispose of the same, and in all the subsequent correspondence the government still treats the property as having been actually appropriated to the public behoof.

The obstructions to Dr. King's free enjoyment of his rights have proceeded either directly from officers of the government, or from those of the demus acting by order and in behalf of the government. The government has disclaimed none of these acts, it has never renounced the plan of occupying the ground in question for national purposes, and it is not until the 10th of April, 1852, after depriving the claimant of his proprietary rights for seventeen years, and after he had asked the interposition of his own government, that the pretence is resorted to by the ministry that the land was to be taken for the use of the municipality, and not for that of the nation.

The non-execution of the ordinance for erecting a national edifice on this site cannot relieve the government from its responsibility. The ordinance has never been revoked, and the government has turned a deaf ear to every application for a release of the injunction. The letter of the minister of the interior of 1844 is not a revocation of the ordinance, nor had the minister any power to revoke it.

The land had been seized for national purposes before the constitution of 1844; the government is estopped by its repeated subsequent acts from denying that the title had passed to it, and it is not admitted that it *could*, had it been disposed to do so, (which there is no reason to believe,) return the lands upon the hands of the owner, depreciated in value, and without compensation for the losses he had sustained by the suspension of his proprietary rights for so long a period. Such has been the view which the government itself has taken of its obligations in other like cases.

By one of the early plans, certain lands of Mr. Gropius, Austrian con-

sul general, were selected as a site for the royal palace. The plan was abandoned, and the palace built elsewhere. Mr. Gropius claimed and received from the national government the full value of his lands, although the government did not occupy them for the proposed purpose, or any other, or ever take any visible possession of them, and they lie waste to this day.

I discover no distinction in principle between the case of Mr. Gropius and the present, and none in the circumstances, except that Dr. King has enjoyed the qualified possession of his land, though forbidden to turn it to any profitable account, a fact which cannot certainly exonerate the government from its responsibility for intervening damages, at the least.

The repeated orders of the government to the demotic authorities to make satisfaction to the claimant cannot, it is thought, operate to shift upon the demus a burthen belonging to the national treasury, and thereby relieve itself. The government evidently felt itself bound to see the money paid, and these orders no more exonerate it from its liability than any other dishonored draft would discharge it. It has treated the demus not as an independent and responsible corporation, but as its disbursing agent, and the clause of the law concerning demi, cited by the minister of the interior, (AA,) does not affect this question. That clause runs as follows :

“There is imposed on the demi the exact fulfilment of all the duties which flow either from their communal scope, or from special legislative provisions. The supreme political authority, if it shall observe negligence on their part in this respect, ought to admonish them to fulfil their obligations.”

It has been shown that the making of a compensation to Dr. King was not a duty of the character indicated in this clause ; and the government, by ordering the demus to discharge a liability of the national treasury, is in the situation of the drawer of a private bill, payment of which has been refused.

The true character of the argument of the minister cannot be mistaken. It is an attempt to transfer a clear national obligation to the shoulders of a bankrupt and irresponsible corporation, and is as disingenuous as it is inconclusive.

Nor is there any inconsistency in contending that an interference with the landholders' proprietary rights by the officer of the royal government, which does not amount to such an opening of street or square as will charge the *demus*, may yet be a sufficient taking of the land to public use, or at least a sufficient deprivation of the proprietors' rights to impose a liability upon the *nation*. The liability of the demus is created and limited by specific legislative provisions, and cannot be extended an iota beyond the provisions of the statute which defines the obligation ; the liability of the government is determined by the general principles of national law. It is not denied that a government, unrestrained by any constitutional limitations, might lawfully take the land of an individual, whether citizen or alien, for a street or square, or as the site of a national edifice, although no previously existing general law had authorized such taking ; but the right of the landholder to demand a compensation in such case is indisputable.

Whatever doubts, therefore, may be suggested as to the character, purpose, and legal effect of the first obstruction of Dr. King's rights, (September 13, 1835, F,) before the ordinance of 1836 had imposed any liability upon the demus, there can be no doubt that the designation of the land as the site of a national edifice, coupled with a continued injunction against any profitable use of it, at least from 1838 to 1844, if not before and after those dates, does create a national obligation to indemnify the party injured; and it is further believed that the various acts of obstruction of his rights by the royal government preceding and subsequent to that period, even if they are supposed to have been committed with a view of ultimately appropriating the land to a purpose provided for by general laws, the opening, namely, of public highways, do yet impose an additional liability upon the government, because it has never applied the property to that use in such a way as to create any obligation of indemnification on the part of the demus, and because also, that if the street and market place be opened at any future day, it cannot be pretended that the demus will be liable for the intervening damages to which the claimant is clearly intitled.

Upon the whole, then, it is clear that the national government of Greece, before the adoption of the present constitution, and in violation of the principles of the organic laws which preceded it, deprived Dr. King of his right to the enjoyment and control of his property in a manner and for a purpose not sanctioned by any law of the kingdom, but by an exercise of arbitrary power; and that since the adoption of the constitution it has continued to obstruct him in the enjoyment of his proprietary rights, without applying the land to any of the uses provided for by law, or making him any compensation, as ordained by the twelfth article of the constitution. It has, moreover, repeatedly admitted his abstract right to a compensation, and it has failed to show that any local corporation, or other inferior branch of the government, is legally bound to make such indemnification.

Upon these grounds I conclude that the Greek government, and the government alone, is responsible to Dr. King; and that it ought not only to compensate him for his damages already sustained, but either to release his land from the injunctions laid upon it, or to pay him its fair value.

After this report was thus far prepared, a fact was brought to the notice of the undersigned which has an important bearing on the question under examination, both as tending strongly to confirm the foregoing reasoning respecting the liability of the Greek government, and as suggesting a doubt whether Dr. King ought not to establish his claim against that government, by a resort to the judicial tribunals of Greece before he can call on his own to enforce it.

According to the first article of the code of civil procedure "every private demand concerning property or rights" in favor of or *against* individuals, bodies corporate, communities, or the *public*, is regularly subject to the jurisdiction of the civil tribunals.

By virtue of this provision, suits may be, and are, brought by private individuals against the State or public, and these are heard and adjudged in the same way as suits between private parties.

Among the parcels of ground included in the proposed square of the

church of the Saviour, was one belonging, Maria Kaftopulo, lying a little west of the property of Dr. King, separated from it by a narrow street or lane, (which was to be discontinued according to the plan,) and not inclosed or occupied with buildings. It does not appear that the public authorities ever entered upon this parcel, surveyed it, forbade the occupation or sale of it, interfered with the proprietor's rights of enjoyment and control, or in any other manner by public act, or private notice to the proprietor, designated the land as appropriated to public use.

It was nevertheless understood to be embraced within the limits of the proposed square of the church of the Saviour, and the proprietor demanded a compensation from the government, which being refused, she commenced a suit against the State or public to recover its value. Judgment was given for the defendant in the court below, and the plaintiff carried the case to the court of appeals.

That court, upon solemn argument, reversed the decision of the court below, rendered judgment for the plaintiff, and ordered damages to be assessed by appraisal. The only evidence of any taking of the land for public use, or of any deprivation of the plaintiff's proprietary rights appears to have been the ordinance of the 3d, (15th,) April, 1838, (O,) a plan of the square, and a certificate of the public architect to the effect that the land was wholly included in the proposed square.

Upon this showing, the court decided that there had been a sufficient taking under the ordinance of 3d, (15th,) April, 1838, (O,) which, it will be remembered was merely a revival of a previous ordinance to the same effect, to entitle the plaintiff to damages to the full value of the land. It was contended by the defendant, that the demus and the neighboring proprietors alone were liable to the plaintiff, on the ground that by the royal ordinance of 1836 they were to indemnify the proprietors of ground taken for streets and *squares*, but the court held that "the indemnification imposed by the twenty-fourth article of said ordinance on proprietors of lands near the city squares, and on the demus, proceeds upon the just principle, that where the benefit is, there the expense should fall; and the landholders near a square of the city are actually benefitted by the concourse of many persons thither; and the demus is likewise benefitted by the improvement of the city thereby, and the accommodation of those inhabiting it; whilst the same principle does not apply to those holding lands near the enclosure of any public building such as the church of the Saviour, because the neighbors and the demus derive no benefit from it, inasmuch as the centre of the enclosure is occupied by the church and its outer portion, as belonging to the church may be walled in." In another part of the decretal opinion, the court observes that "the future temple of the Saviour is to be constructed for a *national* object, consequently it is to be considered and is a *public* temple, and the enclosure of it is a *public* necessity; therefore also the public is bound to indemnify the plaintiff for the lot included in this enclosure, and the court below erroneously regarded the enclosure of this church as a square of the city."

Upon these grounds the court of appeals decided that the plaintiff must be indemnified by the national treasury, and (this judgment was

after, confirmed upon a full hearing by the Areopagus, the highest judicial tribunal of Greece.

The cases of Maria Kaftopulo and of Dr. King are identical in principle, the question involved is precisely the same in both, and the only difference in the circumstances is, that while on the one hand he has been permitted to enclose his grounds, and to enjoy a qualified possession of them upon the conditions before recited, on the other, the government has formally and repeatedly forbidden him to sell his estate, or permanently to improve it, in any such way as to make the possession a source of profit.

The question now suggests itself whether Dr. King is bound to establish his rights by a suit at law against the government, before the ordinary judicial tribunals of the country.

The code of civil procedure does not make this course obligatory upon the claimant in any case of disputed right, and it is matter of grave doubt whether any government can forcibly seize into its hands the property of a foreign citizen acquired in pursuance of its own laws, and then turn him round for redress to tribunals of its own creation, and which are dependent on its own will—tribunals which have indeed the power of determining the right, but not of enforcing their sentences against the public, there being apparently no final process by which the property or resources of the State can be reached.

The undersigned thinks he is doing no injustice to the character of the judicial tribunals of Greece in expressing the opinion that Dr. King would resort to them in vain, in any controversy with the national government.

The decision against the government in the case of Kaftopulo was rendered in 1844, immediately after the adoption of the constitution, when the principles and the hopes which inspired the popular movement that compelled the acceptance of that instrument by the government were yet in full vigour, and when the organic law of the State was still respected and enforced. At present, the constitutional provision requiring the establishment of a permanent and independent judiciary is disregarded. Judges are appointed and removed at the pleasure of the crown, which has absorbed the appropriate powers and jurisdiction of all its inferior departments. Dr. King, as a foreigner, cannot avail himself of the sympathies and the manifold protective influences by which a native is sustained in every controversy with his rulers, and the measure of justice he would be likely to obtain by a resort to Greek courts of law may be estimated by that which has been meted out to him in the criminal prosecution of which he has been lately the victim.

He did not follow the example of Kaftopulo in 1844, and commence a suit against the government, because he understood the letter of the minister of the interior of that year (W) as a relinquishment of the claim of the government to his land; and when the public again interfered with his rights in 1848, it was nominally in behalf of the demus, and the change in the condition of things in Greece had already shown that a resort to the courts of justice would in all probability be fruitless.

It is believed that, unless the government of Greece can disprove or

avoid the facts recited in this report, the claim of Dr. King against it for redress is fully made out. It is the opinion of able professional advisers well skilled in the laws of Greece, and familiar with the administration of justice in her courts, as well as of every impartial observer at Athens, that however clear his rights may be as against the government, they would not now be sustained by the judicial tribunals of the land, and that he has no legal remedy against any other person or body corporate.

In the opinion of the undersigned, therefore, it would be tantamount to a denial of justice to refer the claimant to the courts of Greece, for redress or the establishment of his rights, and his only hope of relief is to be found in the action of his own government.

The case of Mr. Finlay, in which, as is well known, the British government demanded and obtained redress from that of Greece, is very similar to that of Dr. King. The only difference appears to be, that Mr. Finlay's grounds were not within the city plot, but just without the tract, which by the original plan was divided into streets, blocks, and squares, and that his land was actually occupied by the government, the royal palace or gardens being situated upon it. Neither of these circumstances affects the question in the judgment of the undersigned. The right to indemnification secured by the constitution attaches wherever any one is deprived of his proprietary rights, and it is quite unimportant whether the government which so deprives him itself derives any benefit from the act or not. The fact that Mr. Finlay's land lay without the city plot has no bearing on any question except that of the liability of the demus, which is conceived to have been satisfactorily disposed of. Mr. Finlay's claim was resisted by the Greek government on the ground that the land had been seized by an arbitrary exercise of royal power for a purpose not provided for by law, and before the adoption of the constitution, that this was a personal act of the king, for which he alone, and not the nation, was responsible; and that the claimant might have redress, by the ordinary forms of civil process, against all who, in the name of the king, or under his authority, had interfered with his proprietary rights.

There was here precisely the same question as to the liability of the national government as in the present case, precisely the same obligation on the part of the claimant to establish his rights by legal process against the government for property taken by royal authority, in precisely the same way, before the adoption of the constitution, and for purposes not provided for by law, but Great Britain held, that a judicial sentence against the government was not requisite in order to fix its liability, and, without any civil process against the government, required it directly to make satisfaction.

It is understood that, independently of questions of expediency and of the doubts raised, respecting the claim of Pacific's supported by Great Britain at the same time, the course taken by that power in sustaining the rights of Mr. Finlay was deemed by the most eminent publicists of Europe to be in strict accordance with the principles of national law, and it was submitted to by Greece, as well as by the great powers, which in common with England had guaranteed her independence.

Upon the whole case then, the claim of Dr. King is believed to be no

less meritorious than that of Mr. Finlay; it is more unequivocally a claim against the Greek government, because, as has been solemnly decided by the highest judicial tribunal in Greece, the purpose for which his lands were taken, though not one provided for by any general law of the land, was a strictly national one, and not, as in Mr. Finlay's case, an appropriation to the private use of the king, and therefore, apart from considerations of expediency, which it does not belong to the undersigned to discuss, the present claimant appears to be equally well entitled to ask the intervention of the government of his country.

All which is respectfully submitted.

GEORGE P. MARSH.

D.

Royal ordinance of 27th December, 1833.—Of the form and division of the Demi.

1. The kingdom of Greece shall be divided into *demi*, and the extent of each demus shall be defined; extensive woods, morasses, and other uncultivated and thinly inhabited tracts, shall be set apart into separate districts.

2. In fixing the limits of the demi and districts, special regard shall be paid to their physical situation, and when it is possible, they shall be determined by permanent natural boundaries, that is to say, by mountain ridges, ravines, water-courses and the like.

The limits shall be marked by boundary stones.

8. The form and division of the demi are determined by the king; and before any future changes of their organization, when once determined, the opinion of the proper demotic council, as well as of that of the eparchy, and of the nomachy, shall first be taken.

15. Every demus has the right and the duty, under the supervision of the government, (a,) of administering the local and rural police within the limits of the demus; (b,) of regulating independently its affairs, and of managing the demotic property; (c,) of managing in the same way the property of benevolent institutions whenever it, in mixed demi, does not belong exclusively to a particular religious sect; (d,) of electing from its own members the demotic authorities. The powers and duties enumerated under (a) are exercised by the demi in the name and under the orders of the supreme authority of the State; the rights enumerated under (b) (c) (d) in the name of the proper demotic authorities.

16. With respect to the demotic property, the demi may exercise all rights, and enter into all contracts, which the laws allow to individuals in general, and do not specially forbid to the demi.

17. There is imposed on the demi the exact fulfilment of all the duties which flow from their communal scope, or from legislative special provisions. The supreme political authority, if it shall observe negligence on their part in this respect, ought to admonish them to discharge their obligations.

18. As such obligations of the demi, according to article seventeen, are

regarded above all, (a,) the necessary expenditure for the administration of the local and rural police, and the establishment and maintenance of the requisite police institutions; (b,) the payment of the taxes imposed upon the demotic property, and of every other demotic charge; (c,) the compensation of the officers and public servants required for the demotic service, and the indemnification of the demarch for the losses and expenditures incurred by him in the course of his official service, from the neglect of his private affairs; (d,) the establishment and maintenance of primary schools; (e,) the building or renting, and keeping up of the necessary demotic establishments; (f,) the construction and maintenance of demotic roads and bridges, and of the necessary aqueducts and wells; (g,) the setting up and maintaining of the boundary monuments of the lands of the demus; (h,) the construction and maintenance of hydraulic works on shores and waters, so far as the charge of these appertain to the demus; (i,) the supply of the necessary expenses on account of those local benevolent institutions, the support of which, for want of property of their own, or the entire exhaustion of their means, falls to the burthen of the demus; (j,) all expenditures which flow from their legal relations with individuals.

E.

ATHENS, *January 20, (February 9,) 1835.*

SIR: I have the honor to inform you, that some years since I bought two lots of land near the church of the "Holy Apostles;" one of which contains more than three stremmata of land, and the other about two, and that, before any plan of the city was made by Messrs. Cleanthes and Schaubert, I had been at some considerable expense in enclosing the one by a stone wall, and in making preparation for building a house on the same; and that, after the government had sanctioned the plan made by Messrs. Cleanthes and Schaubert, I had in a similar manner been at expense in collecting materials, such as stone, &c., for building a house on the second lot also, and that before there was on the part of the government any hindrance to the carrying out of his plan.

Finding now, however, that according to the plan of Mr. Klientz, almost the whole of my two lots will be cut off by the street Athena, and the new market or the public garden, I beg you to grant me a suitable indemnification.

JONAS KING.

To the MINISTER OF THE INTERIOR.

F.

J. Black to Jonas King.

MY DEAR SIR: I have received the order to close the foundation you once opened in the rear of *Philadelpia*, and the well that is open also in the rear. We begin to-morrow to make the ——— (square of the people,) excuse haste.

Yours truly,

J. BLACK.

Will you put your workmen, or shall I order mine to work at your expense.

(Received, September 13, 1835.)

G.

Extracts from the ordinance of November 12, 1836, concerning the execution of the plan of the city of Athens.

CONCERNING INDEMNIFICATIONS.

22. The indemnification of all those who, by the opening or widening of a street have lost all their plot of ground, or a part of it, shall be made by the remaining proprietors, (it shall be reckoned according to the length of the front,) of the remaining neighboring plots of ground.

23. In the street of Athena, this indemnification is prescribed for five royal peeks in width on either side, and since it is very wide, for the middle portion of it indemnification will be made by the (demos or) commune.

24. In all the squares of the old and new city, this indemnification is prescribed for ten royal peeks in width on each side; but for the middle, indemnification will be made by the commune, (demos.)

RULES FOR THE VALUATION.

25. The valuation will be made by two experts, one of whom the proprietor appoints, the other the council of the demos. These will give their opinion within eight days, and if they doubt concerning the accuracy of the measure, the architect of the city has the right to verify it; but, if they do not agree as to the amount of the indemnification, then the price shall be determined by the court according to the current value, according to preceding and late sales, either of the same plot of ground, or of the neighboring plots of the same quality.

26. If the proprietor, upon the summons of the demarchy to make known his expert does not present him within five days, the governor shall appoint him in his behalf, and the proprietor shall be bound to submit to his decision.

27. The decisions of the experts the President of the court declares, without appeal, and they are executed accordingly without delay.

H.

ATHENS, January 16, 1837.

SIR: I, the undersigned, having a considerable lot of land in the Athena street, the greatest part of which is embraced by the opening of said street and the public garden, and as there remain to me of this land three small plots bordering on small streets, which, according to the plan of the city, will be discontinued, for this reason, I beg the demarch

to order them (the discontinued streets) to be joined to the plots of my own land, as above mentioned, by way of indemnity for the land taken from me for the street and the public garden, and if, according to the decision of arbitrators, I have to receive from the municipal treasury, or to pay anything for the arrangement of this affair, I am ready to conform to what is right.

I remain, sir, your obedient servant,

JONAS KING.

To the DEMARCH OF ATHENS.

I.

ATHENS, *January* 16, 1837.

SIR : I, the undersigned, have about eleven thousand square peeks of land in the Athena street, close to the square of the people, which, by the opening of the said street and square, will almost all be taken for the use of the public, and not for private use, there being no dwelling houses in that part of the city, but open fields ; I therefore request you will, agreeable to the royal decree, and to your own proclamation under No. 2339, (24,) act in the same manner for me as you do for others, who suffer loss by the plan of the capital.

I remain, sir, your obedient servant,

JONAS KING.

To the DEMARCH OF ATHENS.

J.

[No. 2339, (24.)] KINGDOM OF GREECE.

The demarchy of Athens to the inhabitants of this demus :

The subject of the indemnification of those citizens of the demus, whose plots of ground have been thrown open by the opening of the great streets of Athena, of Hermes, of Æolus, &c., by the formation of squares, and the widening of all the streets in general of the city, has been one of the most important and most difficult subjects for the demotic authority. The lack of pecuniary means, and other demotic property, have put the council of the demus and us to the painful necessity of not being able to fulfil what the agreements of the commune established—that is, the donation of plots of ground in another situation, and the other pecuniary indemnification, in addition to this, to those from whom their private property was taken for the execution of the plan of the city, and so much the rather, as the said agreement was made on the supposition, that that indemnity was to be made, not only in behalf of all the province, but also from such taxes as the treasury of the demus was not able according to law to collect. Many deliberations having taken place in our demotic council, and different observations of

the demarchy, which, having been sent for the approval of his majesty, have brought about the happy result of our being able to set at rest the complaining citizens of the demus, indemnifying them through those individuals who have been benefitted by the opening, as we have said, of the streets of Athena, Hermes, Æolus, &c., by the formation of squares, and the widening of all the streets of the city, without burthening the treasury of the demus, and the citizens of our demus, with endless imposts, and especially without those who have a right to indemnity, being compelled to be thrown, according to the said agreement, to one extremity of the city, whilst they have ceded plots for houses and shops in its centre, and whilst, finally, according to the measures already taken by his majesty, the person indemnified in money for the worth of the ceded land of his can choose for himself the situation of his new house, and certainly an endless number of such sites exist within the plan ;

Since these things are so, we invite again each one of those having, as above, claim to indemnity to conform to the following extract of the high royal decree of 12th, (24th) of November, 1836, under No. 16,347, which is as follows :

CONCERNING INDEMNIFICATIONS.

22. The indemnification of all those who, by the opening or widening of a street, have lost all their plot of ground, or a part of it, shall be made by the remaining proprietors (it shall be reckoned according to the length of the front) of the remaining neighboring plots of ground.

23. In the street of Athena, this indemnification is prescribed for five royal peeks in width on either side, and since it is very wide for the middle portion of it, indemnification will be made by the commune.

24. In all the squares of the old and new city, this indemnification is prescribed for ten royal peeks in width on each side, but for the middle indemnification will be made by the commune.

RULES FOR THE VALUATION.

25. The valuation will be made by two experts, one of whom the proprietor appoints, the other the council of the demus. These will give their opinion within eight days, and if they doubt concerning the accuracy of the measure, the architect of the city has the right to verify it; but if they do not agree as to the amount of the indemnification, then the price shall be determined by the court according to the current value, according to preceding and late sales, either of the same plot of ground or of the neighboring plots of the same quality.

26. If the proprietors, upon the summons of the demarchy to make known his expert, does not present him within five days, the governor shall appoint him in his behalf, and the proprietor shall be bound to submit to his decision.

27. The decisions of the experts the president of the court declares without power of appeal, and they are executed accordingly without delay.

ATHENS, *January 7, 1837.*

The Demarch.

A. PETRAKES.

K.

ATHENS, *June 26, 1837.*

SIR: About six years ago, I bought a lot of land, called "Philadelphia," not far from your excellency's office, containing the 6,450 square peeks, and I have applied several times to government for permission to build on the same, without ever having up to the present time received it. I have endeavored to sell it, but have not been able on account of the doubt there exists as to the plan of the city for that quarter in which it is situated.

At length, tired of waiting any longer, I have taken the liberty of addressing your excellency, requesting a decision on the fate of my land, that I may be enabled to dispose of it, or build thereon, according to my pleasure.

Should the government wish for my land, I demand that a proper indemnity, according to its value, should be immediately given me.

I beg of your excellency to give me a definitive answer as soon as possible, that I may no longer be obliged to remain without being able to make any use of my land.

I have the honor to be, sir, your most humble and obedient servant,
JONAS KING.

To his excellency the CHEVALIER RUDHARDT,
*President of the council of ministers, Secretary of
State for Foreign Affairs and the King's Household.*

L.

To his majesty the King, the Secretary of State for the Home Department.

MR. KING'S CLAIMS.

ATHENS, *June 23, 1837.*

I have the honor to reply to the royal order of the 16th, (28th,) June.

One part of Mr. King's lot of land, called "Philadelphia," is cut off according to the plan of the city of Athens, by the Athena street, and another part by the market place, the draught of which was submitted to your majesty's consideration in my report of the 2d of November, 1835, No. 9,228. He has only two small plots remaining, one situated to the east, and the other to the west of the Athena street, of which he may dispose or build on according to his pleasure, provided he conform to the regulations laid down by the plan.

For the land taken for the Athena street, as well as that taken for the market place, Mr. King will be paid an indemnity by the demus of Athens, according to the agreement made between the demus and the landholders.

Consequently Mr. King can only dispose of the two small plots above mentioned.

I have the honor to be, with the most profound respect, sire, your majesty's most humble and obedient servant and subject.

THE SECRETARY OF STATE,
for the Home Department.

M.

OTHO, ETC., ETC.

We order our minister of the interior to inform Mr. King, without delay, that one part of his land will be appropriated to the use of the city of Athens, and that with regard to the other part he has permission to dispose of it as he pleases; and you will take care that there be made by the demus of Athens the indemnity due to him.

OTHO.

ATHENS, *June 26, (July, 8,) 1837.*

N.

(No. 9948.)

KINGDOM OF GREECE.

The Secretary of the Home Department, to Mr. Jonas King.

I have to inform you, that in consequence of a royal decree signed on the 26th June, (8th July,) a part of your lot of land, known by the name of "Philadelphia," is, according to the plan of the city of Athens, taken by the street Athena, and another part by the market place. The indemnity for these plots of ground will be paid to you by the demus of Athens, according to the provisions on this subject. You will therefore come to an understanding with the governor of Attica, whom we have ordered to effect your indemnification by the demus of Athens. As, however, you will have two small plots left on the two sides of the market place, you may build on them, or otherwise dispose of them at will, following always the plan prescribed for that portion for which the architect of the city can furnish you with every information you may desire.

The Secretary of State.

A. POLYGOIDES.

ATHENS, *3d, (30th,) June, 1837.*

O.

Decree concerning the erection of a church of the Saviour in Athens.

OTHO, BY THE GRACE OF GOD, KING OF GREECE.

Whereas, we have already expressed by our decree of January 35, (February 6,) 1834, our desire to erect in our capital, Athens, a church honored with the name of the SAVIOUR, for the eternal remembrance of the miraculous assistance of divine providence, which has rescued the Greek people from evils and dangers, and for the strengthening of posterity in the faith, by means of which our forefathers acquired their independence;

We decree :

The plans submitted by the architect appointed for this purpose having been approved by us, as worthy in all respects both of the Greek people and of the occasion in commemoration of which it is raised, *the site having also been fixed upon*, on which this church is to be erected, that the erection of this monument commence as soon as possible.

Wherefore : We decree, that the beginning of the primary works shall commence forthwith, and the building advance in proportion to the funds existing from time to time. Considering this church which is to be erected as indeed a national monument expressing the gratitude of the nation towards the Most High, we hope that every Greek will consider it an honor, moved by true patriotic sentiments, to contribute joyfully according to his ability ; we ourselves will set apart from our private treasury a suitable sum.

Our state bureau of ecclesiastical affairs, &c., is ordered to give the necessary directions, as well to the bishops and priests of the realm and the demotic authorities as to our ambassadors and consuls, that they may collect the voluntary contributions offered for this object.

The names of those who contribute to this good and national end will be inscribed in a particular book, that they may be preserved in this church for their eternal remembrance.

The present decree will be published in the journal of the government.

OTHO.

ATHENS, *April 3, (15,) 1838.*

The Secretary of Ecclesiastical Affairs, and of public instruction.

G. GLARAKES.

P.

To the Secretary of State for the Home Department.

SIR : I, the undersigned, wishing to dispose of a part of the lot of land which, according to the first and second plan of the city of Athens, remained to me of my lot of land called "Philadelphia," I was informed by the government architect, Mr. Schaubert, that the government has taken almost the whole of said land, according to a new plan sanctioned by his majesty the king.

I therefore beg your excellency to inform me whether my information be correct or not.

I remain, with due respect,

JONAS KING.

ATHENS, *September 12, (N. S.,) 1838.*

Q.

[No. 99, (57.)]

KINGDOM OF GREECE.

The municipal police of Athens to Mr. King.

SIR: You are hereby desired to cease from undertaking any building whatever on your land by the square of the church of the Saviour, and also to fill up the ditch already opened by you, and this agreeably to the plan of the architect of the city, dated the 16th of the present month.

ATHENS, *January 21, (February 2,) 1841,*
The Head of the Police.

NICOLAS PETROKOKINOS.

R.

To the royal police of Athens.

SIR: I, the undersigned, beg to inform you that his august majesty, the king of Greece, was pleased some years ago to order me to be paid an indemnity for the plot of ground which you mention, but that, up to the present moment, I have not received a single farthing, consequently I wish to sow it, and for that reason I opened the ditch around it, and also that the boundaries of the lot may appear.

I remain, with all respect,

JONAS KING.

ATHENS, *February 3, (N. S.) 1841.*

S.

To the royal police of Athens.

SIR: I, the undersigned, beg to inform you, that before the arrival of his majesty the king, and before the present plan of this city existed, I opened the ditch concerning which you make mention in your communication under number 99, (57,) and that in consequence of its having been filled up, I opened it again that the boundaries of my land might appear, and also for the purpose of sowing it.

I remain, with all respect,

JONAS KING.

ATHENS, *February 10, (N. S.) 1841.*

T.

ATHENS, *June 3*, (N. S.) 1844.

SIR: I, the undersigned, an inhabitant of Athens, request permission from the worshipful demarchy of Athens, to enclose by a wall a plot of ground I have, touching my lot of land called "Philadelphia," and on which plot are two small houses, in which families have for a long time been living.

I remain, with respect,

JONAS KING.

To the DEMARCH OF ATHENS.

U.

[No. 1693, (1094.)] KINGDOM OF GREECE.

The Demarch of Athens to Mr. Jonas King.

In answer to your petition under date of June 3, (N. S.) and in consequence of the opinion of the architect of the city, as regards your demand, I beg to inform you that you have permission to enclose your land with a wall to the height of $1\frac{30}{100}$ metres, on condition that you shall previously depose a written obligation in the demarchy, that, as soon as it shall be decided to carry into effect the building of the church of the Saviour, you shall not claim any indemnity for the said temporary walls.

The Demarch,
ATHENS, *May 25*, 1844.

A. PETRAKES.

V.

ATHENS, *June 3*, (N. S.) 1844.

SIR: I, the undersigned, an inhabitant of Athens, request permission from the Secretary of State's office, to build on my land called "Philadelphia," where I have about eleven thousand square peeks, or should the government require this land, that a fair indemnity should be paid to me for the same.

I desire this the more because I have already been deprived of the use of this lot of land for about thirteen years.

I remain, with every respect,

JONAS KING.

To the SECRETARY OF STATE *for the Home Department.*

W.

[No. 7460.]

KINGDOM OF GREECE.

The Minister of the Interior to the Rev. Jonas King, concerning his lot of land situated in the square of the church of the Saviour.

SIR: In answer to your petition, dated June 3, (N. S.) I beg to inform you that, as according to the plan of the city, your lot of land called "Philadelphia" will be taken for the square of the church of the Saviour, we have in all haste ordered the municipal authorities that it cause to be made to you your indemnity, not only by the neighbours, but also by the demus, according to the royal ordinance, dated 12, (24,) November, 1836.

I beg further to inform you, that in case your indemnification be not made within ten days, you are at liberty to make use of your property agreeably to the 12th article of the constitution.

The Minister,

ANDREAS LONDOS.

ATHENS, June 1, 1844.

X.

Copy of a petition of Jonas King to the Demarch of Athens.

TO THE DEMARCH OF ATHENS.

The undersigned asks permission to build a small house of one story on the west side of the western division of his lot called "Philadelphia," promising not to ask indemnification from the government *for the building of this small house*, if it is found, according to the approved plan of the city, to be within the great square of the market.

JONAS KING.

ATHENS, September 9, (21,) 1848.

"On the above condition permission was given to Mr. King, and he put up the small building above mentioned.

"In like manner, also, on a similar condition, there was given to him, in 1850, permission to build a riding-school for the Pales."

The architect of the city,

D. TEZER.

Y.

MINISTRY OF THE KING'S HOUSEHOLD, AND OF FOREIGN AFFAIRS.

ATHENS, November 22, (December 4,) 1850.

SIR: I have the honor to inform you, in answer to the two communications you have addressed to me, regarding the claim of Mr. King, that the minister of the interior on the receipt of the first, hastened to

give an order to the engineer officer, who is entrusted with carrying out the plan of the city of Athens, to proceed with the modifications which, conformably to the 4th article of the royal ordinance of 1836, are to be carried into effect, in order to be able to decide who are the persons to be called upon to pay the indemnity due to Mr. King for the portion of land which, according to the plan of the city, he cannot dispose of.

As soon as the result of these modifications shall be known, which will shortly take place, the minister will send me his decisive answer as to the claim, and I shall have the honor of making it known to you.

Accept, sir, the assurance of my distinguished consideration,

P. DELYAOMI.

To J. D. DIORNETARI, Esq., *United States Consul, &c., &c.*

Z.

The Minister of the King's Household and of Foreign Affairs to Mr. J. King, performing provisionally the functions of Consular Agent of the United States of North America.

ATHENS, April 18, (30,) 1852.

SIR: The minister of the interior, to whom has been transmitted all your communications relative to indemnification which you claim for a part of one of your lots of land at Athens, intersected by the plan of the city, has just addressed to me a definitive answer, a copy of which I have the honor to transmit to you herewith. In that you will well find the reasons why the royal government, having nothing to do with this affair, it was for you, sir, knowing very well long since the nature of your claims, to demand your rights in proper time and place, by availing yourself, for this purpose, of the means which were afforded to you by the laws in force; and if you have not judged it expedient to make use of them hitherto, this delay, you will conceive, can by no means be imputed to the royal government.

Receive, sir, &c., &c.,

A. PAICUS.

AA.

[No. 5,379, (6,493.)]

The Minister of the Interior to the Minister of Foreign Affairs.

ATHENS, April 10, (22,) 1852.

SIR: In answer to your documents concerning the subject below mentioned, we have the honor to inform you that the numerous documents on which Mr. King rests his claims against the Greek government do not at all change the character of the case.

Mr. King, though a foreign subject, is subject, as to his property in Greece, to the laws of the realm, both according to the principles of

the law of nations and according to article 1 of the treaty between the United States of America and Greece.

The lot of land belonging to Mr. King in Athens, according to the approved plan of this city, is taken in part by the street of Athena, in part by the square of the market, and a part, as suitable for building, remains at his disposition.

If Mr. King would take into view, as he ought, the law of the 12th November, 1836, concerning the execution of the plan of Athens, (see code, tome 2, p. 617,) and particularly the articles 22, 23, and 24, he would see that, according to the law, his neighbors are obliged to indemnify him to the width of five royal peeks of the property taken, and the demus for the remainder of it, and not the public.

The government, superfluously and out of kindness to Mr. King, called upon the city authorities at different times to finish the business of the indemnification due to him; but surely it does not escape Mr. King that the government could not oblige the demus to make this indemnification, because such obligations in Greece, even upon the demi themselves, are only imposed judicially.

Although the consequences of ignorance of the laws fall heavy upon him who is ignorant of them, Mr. King from the commencement was not ignorant that the demus, and not the public, is obliged to indemnify him.

The proof of this circumstance is found in the documents mentioned by Mr. King.

According to the regulations concerning the application of the plan, whoever wishes to build upon his lot must make a petition to the city authority for permission to build. In pursuance of this petition, the proper architect repairs to the place and fixes the line of building, if there exists no impediment.

In the contrary case, that is, if the lot of the petitioner is taken wholly or in part, or if there exists a reason for change, according to article 2 of the royal ordinance of 9th April, 1836, then he makes out a measurement of the lot, from which the proprietor of it learns the persons who are obliged, according to law, to indemnify him, the proportion which falls upon each person, and the part of his lot which remains at his disposition. All these things are carried into effect at the instance of those interested, whoever they may be.

But as it respects the manner of the valuation of the lots taken for private use or for the demus, the clause of article 25 of the before mentioned ordinance of the 12th November, 1836, is in force.

Nevertheless, as by our communication of November 30, 1850, under No. 20,646, be informed, sir, that all the above proceedings took place, the results of them having been communicated to Dr. King, to whom there remains nothing but to accept them, or to submit to our department his complaint, according to article 4 of the royal ordinance of 9th April, 1836.

From what has been stated, you will be persuaded, sir, that there is no foundation for the claims of Mr. King against the public; that he, as a proprietor in Athens, is subject to the laws of the kingdom; that his lot called "Philadelphia," situated within the limits of the approved plan of the city, is subject to the regulations respecting the laying out

of streets and other things defined by the ordinances of April 9 and November 12, 1836; that if the government, acting with indulgence towards Mr. King, and having regard to the venerableness of his character, interfered in the matter with reference to his indemnification, repeatedly exhorting the demus to perform its duty towards him—the government, we say, by this intervention, which was in accordance with the clause of the 17th article of the law concerning demi, did not undertake the obligation to make itself the indemnification, the demus delaying or denying it.

Mr. King, urging with so much perseverance his claims against the public, is not a little strengthened in this by the example of Finlay; but there exists a great difference between the two cases, for the lot of Finlay, lying without the limits of the plan of the city, and thus free from the legal imposition of the public streets, was taken for a public necessity, not properly certified; but the lot of King, lying within the city, subject to the regulations for laying out streets, is taken for a use provided for by an express law regulating the manner of his indemnification, and indicating the persons who are liable to make it.

This report we should not have delayed so long if Mr. King had been pleased to yield to our request concerning the communication of the official documents referred to in his petition to the consul of the United States.

The minister,

A. S. DANOPOULUS.

BB.

UNITED STATES CONSULATE,
Athens, August 5, (July 24,) 1852.

SIR: The minister of the interior, in his communication to you under date of April 10th, 1852, a copy of which you enclosed to me with yours of April 18, (30,) 1852, says:

[Here follows an extract.]

Of that document will you have the goodness to furnish me with a copy, so that I may learn at what time certain events transpired, and when the consequences of them were communicated to me?

The minister of the interior, in his communication to me the 3d of June, 1837, says:

[Then follows the quotation.]

The same minister, in his report to his majesty the king, the 23d June, 1837, says: “Une partie de l’un placement de M. King, nommée Philadelphié est enterée d’après le place de la ville d’Athènes par la rue de la Minerve, une autre partie en est prere *par la marché*, dont le projet a été sournis à votre majesté par mon rapport en date du 2me Novembre, 1835, No. 9,228,” etc.

His majesty the king, also, by his order of the 26th June, (July 8,) 1837, says:

[Here follows the king's order.]

The municipal police of Athens, in a communication to me the 21st January, 1841, says :

[The communication is then quoted.]

The demarch of Athens, in a communication to me the 25th of May, 1844, says :

[Here follows an extract.]

The minister of the interior, in a communication to me the 1st June, 1844, No. 7,460, says :

[Here is appended an extract from the minister's letter.]

The minister of the interior, in his communication to you above-mentioned, of the 11th April, 1852, a copy of which your excellency enclosed to me, with yours of the 18th, (30th,) April, 1852, says :

[Here follows the extract.]

Having all these different communications in view, I beg that your excellency will have the goodness to inform me, first, what portion of my lot of land called "Philadelphia" is now demanded by the government ; second, for what purpose ; and, third, according to what plan. And I beg your excellency also to furnish me with the present plan of that section of the city in which said lot called "Philadelphia" is situated.

Yours, with all respect,

JONAS KING,

United States consular agent, for John D. Diometaré, esq.

To his excellency A. PAICUS, *Minister of Foreign Affairs.*

CC.

Concerning the liquidation of the debts of the Demi, OTHO, &c.

In concurrence with the chamber of deputies and the senate we have decreed and do ordain :

Article 1. For debts contracted after the formation of the demi, all attachment of their yearly revenue, fixed by the budget or by other particular acts, is forbidden.

Article 2. Those who have claims against a demus, founded upon orders issued according to the lawful form, upon final judicial decisions or other executory documents, are bound, before the voting of the budget, to make to the proper demarch their demand for payment, by petition, or by admonition of payment made according to the lawful forms.

Article 3. The demotic authority, having received the petition according to the above article, or the admonition of payment, is bound to note the required sums in the budget of the year immediately following ; but if the demands of the creditors of the demus exceed the

pecuniary means at its disposal, then it must appropriate the fifth part of the budget of the receipts to the satisfaction of these creditors, *pro rata*. The demotic collectors are bound, upon pain of damages, to retain out of the moneys collected the above-mentioned amount, which they shall pay to the said claimant in due proportion. But, if the demotic authority does not cause such claims to be provided for in the budget of the year immediately following, the creditors of the demus have the right of attaching the fifth part of the ordinary and extraordinary receipts of the budget of the demus for that and the following years.

Article 4. The provision of the law of June 23, 1837, concerning the debts of the communes, remain in force as far as they are not contrary to the present law.

The present law, having been voted by the chamber of deputies and the senate, and ratified by us this day, shall be published in the journal of the government and executed as a law of the state.

OTHO.

K. PROBELEGGIUS.

A. S. DANOPULUS.

In ATHENS, January 24, 1852.

Examined, and the great seal of state hereunto affixed at Athens, January 24, 1852.

The Minister of Justice,

K. PROBELEGGIUS.

Mr. Marsh to Mr. Webster.

GLEICHENBERG, NEAR TRIESTE, October 4, 1852.

SIR: As I proposed in my letter of August 21st, from Athens, I sailed from that port for Trieste, on board the San Jacinto, on the 23d of August, and arrived at Trieste on the first of September. I immediately proceeded to this place and applied myself to the completion of my reports. The first of these, that respecting Dr. King's claim upon the Greek government in respect of his lands, was finished and mailed for London on the fifteenth of September. A week after, it was returned to me by the postmaster of a country town through which it passed, because he supposed it to be a package of merchandise. It was then again forwarded, with proper explanations, and has, I hope, been allowed to proceed without further obstruction.

I had pretty fully examined the other question while at Athens, and arrived at definite general conclusions; but after my letter of August 21st was written I received further papers, and additional volumes of laws, which also required some study. Upon resuming the case here, with the view of copying out and enlarging the report, I found, in comparing the translations with the laws, the record, and other documents, that some of them must be altogether rewritten, and that they all required a more careful revision than I had expected. This has been a task of some difficulty and labor, as the office copies are so slovenly

in their chirography that a person not familiar with the modern Greek written character can decipher it but slowly. I have, however, performed this labor, and though I have failed to make out here and there a word, I can say, after a third revision, that I believe no important error remains to be corrected.

I judged, also, that I should save the department some labor by collating and arranging the evidence; and I thought the importance of the matter, in its immediate consequences, and as a question of principle, justified me in taking the time necessary for presenting a somewhat full view of the case in the report, and especially for the careful study of so much of the Greek penal code and code of criminal procedure as could be supposed to have any bearing upon it.

I found that some of Dr. King's counsel, who stood highest in public estimation, although they had in private expressed the most decided disapprobation of the conduct of the courts in convicting Dr. King, and in sustaining the conviction were reluctant to commit themselves openly on the question, partly perhaps from apprehension of incurring the indignation of the government, and partly from an honorable reluctance to express opinions publicly, which a foreign government might use to the prejudice of their own. I had, therefore, no communication whatever with any professional gentlemen, and I am alone responsible for all the conclusions of the report, and the arguments upon which they are founded.

Before I visited Greece, Dr. King had obtained the written opinion of eminent counsel, a translation of which I subjoin, but I have not referred to it in the report, because I thought it might prove injurious to them, and because, also, however valuable as an opinion, it is not of much weight as an argument.

I have now entirely completed the report, but as, with the copies and translations annexed, it is very bulky, I shall retain it until the 10th or 11th of the month, when I shall have means to forward it to Vienna, and perhaps further, by a private conveyance.

I remain ready to execute the further instructions of the department, and shall keep near some convenient port of embarkation for Athens or Constantinople, as you may be pleased to order, and Mr. Miller, of London, will be at all times advised whither to forward despatches.

I have the honor to be, sir, with profound respect, your obedient servant,

GEORGE P. MARSH.

Hon. DANIEL WEBSTER.

Secretary of State.

ATHENS, May 1, (13,) 1852.

Translation of a document, containing the opinion of twelve Greek lawyers, in Athens, concerning the trial and condemnation of Jonas King, in 1852.

SIR: You have done us the honor to ask our opinion on the decision of the areopagus against you, if this is not prohibited by the law or judiciary discipline.

Although what has been judicially decided is considered as the truth itself, it is, however, permitted to compare the decisions of the courts with the unchangeable principles of right, and to judge how far they are in accordance with them, and this with the same freedom with which we judge every other work of the human understanding. Hence we see daily, in the writings of the French jurists, the decisions of the wise supreme judicial court become the objects of scientific discussion, and sometimes of severe censure.

According to us the decision of the areopagus before us is erroneous, for the following reasons :

The criminal court, in the recapitulation of the reasons for its decision, declared, that the simple denial of the dogmas of the eastern religion concerning the Mother of God and the mystery of the communion is a malevolent expression, attacking the dogmas of that church, and thus applied against you the 17th article of the penal code, which punishes attacks on the dogmas of religion by malevolent expressions.

Your counsel rested on this plea for annulling [the sentence,] properly maintaining that the simple denial of a dogma is not a malevolent expression, and that if the contrary be established by jurisprudence, then no other religion will be tolerated in Greece, because every religion, considering itself as the absolute truth, denies and rejects the dogmas of others. "It would be violating the liberty of worship," says the duke de Broglie, "to interdict to such or such a religion the right to launch an anathema against every other, and to proclaim itself exclusively the truth."—Chassan, *des délits de la parole*, tome 1, page 276.

What answer to this reason does the areopagus give? *That, as the criminal court of Athens, having in its sovereign authority, weighed the actual facts, was persuaded that they constitute the crime provided against by article 17, the areopagus cannot interfere in the investigation of those facts ;* and this reasoning would be correct if the criminal court had alleged that the denial of the dogmas of the eastern religion by you was accompanied by malevolent expressions against this religion ; but when the criminal court considers as a malevolent expression simply the expression of nonacceptance of those dogmas by Jonas King, who belongs to another Christian religion, then the criminal court fabricates as a crime an act not punishable by the law, and the areopagus, without interfering in the investigation of actual facts, had the power to annul a decision which established such an absurd principle, and belies that axiom which our lawgivers understood as being in force with us. "One may say that, at the present day, the liberty of discussion and of criticism in religious matters is inviolable."—Chassan, *ibid*, page 282.

We salute you.

Mr. Marsh to Mr. Webster.

GLEICHENBERG, October 9, 1852.

SIR : I have the honor to enclose herewith the report referred to in my dispatch of the 4th instant. I intended to have attached to it a copy of the anathema of the synod against Dr. King, and his books

noticed in the report, but by some accident I omitted to put it with the papers selected to accompany the report. I have written to Dr. King to supply the omission.

I regret that I am unable to send fairer copies of the report and the accompanying documents, but the state of my eyes puts it quite out of my power to make them, and I have no person within reach whom I can employ for that purpose.

I am, sir, with the highest respect, your obedient servant,
GEORGE P. MARSH.

HON. DANIEL WEBSTER,
Secretary of State.

ATHENS, *August 21, 1852.*

SIR: Under that branch of my special instructions, bearing date April 29, 1852, which requires me to "ascertain whether the late trial of Dr. King was for any offence, as alleged, against the laws of Greece, and whether it was conducted in all respects in a fair and legal mode; and also to what extent religious toleration is allowed and public preaching permitted by law or usage among those who do not belong to the established church; and also all other circumstances that may throw light on the subject, and enable the department to give further instructions," I have the honor to submit the following report:

In the year 1828 the Rev. Jonas King, of Massachusetts, a citizen of the United States, visited Greece as an agent of one of the associations formed in America for the relief of the Greeks from the destitution and misery in which they were involved, in consequence of their efforts to throw off the Turkish yoke and establish an independent government. For this object Dr. King was intrusted with funds and supplies to a large amount, and devoted himself to the distribution of them, and to the general duties of his agency, with a zeal, assiduity, intelligence, and disinterestedness which not only gave entire satisfaction to his employers, but, according to testimonials from the highest sources, entitled him to the respect and lasting gratitude of the people and government of Greece.

In this capacity he continued to act as long as his services were needed, and, after remaining about two years in Greece, he entered into, and has ever since continued in, the employment of the American Board of Commissioners of Foreign Missions as a Protestant missionary. He now engaged in preaching, in establishing and superintending schools for general education, and in preparing books of literary, scientific, moral and religious instruction.

In the prosecution of these labors he disclaimed proselytism as an object, and, in fact, made few or no converts to his own denominational views; but it is believed that his efforts, so far as regarded their general scope—the diffusion, namely, of general knowledge, and of those principles of religious and moral doctrine which are professed alike by all Christian sects—were successful, and were for many years regarded by both the government and the people as useful to Greece and honorable to himself.

From the declaration of the independence of Greece to the accession of king Otho, in 1832, and, of course, during the first four years of Dr. King's residence there, that country was governed under the provisory constitution of Epidaurus and the revisions of Astros and Troezen. The provisory constitution, which bears date January 1, (13,) 1822, declares :

CHAPTER I.

"Article 1. The orthodox religion of the eastern (Greek) church is the religion of the State; nevertheless, all sects are tolerated, and every one professes freely his own religion."

CHAPTER II.

"Article 4. Every foreigner having, for the time being, his domicil in Greece, enjoys there the same civil rights as the Greeks."

The revised constitution of Astros embodies the article first above cited in the same words. It adopts the fourth article of chapter II, omitting the words "for the time being;" and it provides, section 2, chapter II, § 8:

"The Greeks have the right of publishing and printing their opinions, conforming to the conditions following :

"1st. They shall not write against the Christian religion ;

"2d. They shall not depart from the generally recognised principles of morality ;

"3d. They shall abstain from all personal abuse."

The constitution of Troezen provides :

"Article 1. Every one in Greece professes his own religion freely, and obtains for his worship (or sect) the same protection ; but the orthodox religion of the eastern church is the religion of the State."

CHAPTER III.

"Article 9. Every foreigner who comes to fix in Greece his residence or his domicil is equal to the Greeks in the eye of the municipal law.

"Article 26. The Greeks have the right of writing, and of publishing by the press or otherwise, their ideas and their opinions, conforming to the following conditions :

"1st. Of not attacking the principles of the Christian religion ;

"2d. Of not departing from the generally received principles of morality and decency ;

"3d. Of abstaining from all personal calumny and abuse."

Thus far, it will be observed, the fullest freedom of opinion, of speech, and of the press, was secured, and although the Greek church was recognised as the nominal religion of the State, yet neither its dogmas nor those of any other church were under the protection of the law ; and any resident of Greece, native or stranger, might, orally or through the press, attack, without any other restraint than those of de-

cency and proper respect for the sacredness of private character, its peculiar tenets, its rites, its traditions, and its authoritative standards of faith.

Such was the state of the law in Greece, in respect to the liberty of conscience and of speech, when England, France and Russia determined to interfere in the struggle between Turkey and Greece, and to secure at first the virtual, and finally, also, the avowed and complete, deliverance of the latter country from Turkish rule; and these great powers wisely resolved to guaranty to all the inhabitants of Greece the continued enjoyment of the liberal and enlightened principles of religious liberty which Greece herself had solemnly adopted and proclaimed to the world.

It is known to all familiar with the history of the relations between the Christian powers of Europe and the Ottoman Porte, that France has, for several centuries, claimed and exercised certain rights of patronage and protection in behalf of Catholic Christianity in the east. When Greece ceased to be a province of a Mohammedan empire, and became a Christian State, France resigned those rights as to the territory of the new commonwealth; but insisted that the Catholic population of Greece should be protected in the possession of their church property and the enjoyment of their religious liberties, by special guarantees on the part of the allied powers. The justice of this demand was recognized, and by protocol No. 3, of the conference of the 3d of February, 1830, a copy of which is hereto annexed and marked A, (p. 66,) the allied powers entered into stipulations providing for the free exercise of the Catholic religion in Greece; and further, with a view "of preserving that country from the evils which the rivalry of sects or religions professed there, might produce," agreed that "all the subjects of the new States, whatever might be their religion, should be admissible to all public offices, functions, and honors, and treated on the footing of an entire equality, without regard to difference of faith, in all their religious, civil, and political relations."

It having been suggested that the terms of these stipulations would prevent the government of Greece from recognizing the Greek church as the religion of the State, and especially that they were objectionable to the Greeks, as securing to Mussulmans who might choose to remain in Greece a complete equality of political, civil, and religious rights; these provisions in favor of universal religious liberty and equality were modified by a subsequent protocol, (No. 33 of the conference of July 1, 1830,) a copy of which, so far as is material to the present inquiry, is annexed and marked B, (p. 68.)

Although this latter protocol may be perhaps considered as excluding Mohammedans, Jews, and other non-Christian sects from the full benefits of the guarantees of the former, as it respects *civil* and *political* equality, and declares that the rights and privileges granted to the *Catholics* are not to be construed as "imposing on the Greek government any obligations which can turn to the prejudice of the dominant church," yet it still recognizes the principle of complete security for all *Christian* sects, without distinction, and the same absolute equality of rights which the former protocol had guaranteed to those who profess them.

By various authoritative documents, at periods preceding and following the invitation to Prince Otho, of Bavaria, to assume the crown of Greece, a constitutional form of government was promised; but the allied powers did not limit the royal authority, nor was any constitution promulgated until certain popular movements in 1843 compelled the government to take the necessary measures for the preparation of a constitution, and a constitution was, in fact, drawn up, adopted, and sworn, in March, 1844.

In the meantime, the original constitutions had never been annulled, or their binding force authoritatively denied, and though perhaps it may perhaps be considered as an open question, it is known that many, perhaps most, of the ablest Greek and European jurists hold that those constitutions, so far as their provisions were reconcilable with a monarchical form of government, remained in full virtue after the accession of King Otho, and until they were superseded by that of 1844.

But, however this may be, it cannot be denied that the recognition of religious freedom and equality by the protocols already cited, is one of the series of guarantees to which the three great powers pledged themselves, and it is, of course, one of the irrevocable conditions which accompanied the establishment of Greece as an independent State, the offer of the crown to Otho of Bavaria, its acceptance by that prince, and his acknowledgment by Greece as her lawful sovereign.

The obligations entered into by the several parties to the arrangement which erected Greece into a sovereign State, and elevated Prince Otho to its throne, are believed to form a compact, which, by the principles of public law, is binding alike upon the powers which adopted, and the king and nation that accepted them.

It is not within the province of the undersigned to suggest any considerations in respect to the extent to which these stipulations may bind the allied powers to interpose, upon the demand of the United States, in maintenance of the religious liberties of American citizens resident in Greece, and by her laws placed in this respect on the same footing as her own subjects; but it is evident that these guarantees are, in letter and in spirit, of paramount force to any subsequent royal ordinance, constitutional provision, or legislative enactment of Greece, and though they were not appealed to upon the trial of Dr. King, nor have, so far as the undersigned is advised, ever before been cited in reference to the question under consideration, yet it is conceived that they will be found to have an important bearing upon it.

By a royal ordinance of 18th, (30th,) December, 1853, a general penal code, many of the provisions of which were borrowed from the French codes, was adopted. Among those provisions so borrowed were several by which reviling and malevolently assailing the doctrines, rites, or customs of *any* religious sect, as also the expression of opinions or principles repugnant to the grounds of religion and morality in general, are forbidden, and made punishable offences.

At a subsequent period, not precisely known, (the date of the ordinance about to be cited not being given in the edition of 1844,) but before the adoption of the constitution, a royal ordinance was promulgated repealing the provisions above referred to, and enacting a new law, entitled "An act concerning reviling in general, and concerning

the press." The 17th section of the new act, under which Dr. King was convicted, is, so far as it defines the particular offence of which he was adjudged guilty, identical in terms with the law previously in force, and it remains a translation, not indeed strictly literal, but as nearly so as the structure of the two languages would well admit, of the corresponding provisions of the French code. This is a fact of some importance in reference to the construction of the law, because in adopting a foreign statute the legislator must be supposed to have had in view the known and settled construction and interpretation of the law adopted. A translation of the article in question, and of the 18th article of the same law, together with the original of the section of the French code corresponding to that on which Dr. King was finally convicted, (17,) is given in the paper annexed, marked C, (p. 69,) and, as the penal code of 1833 was published by authority, in German as well as in Greek, (and, in fact, is understood to have been originally framed in German, the Greek being but a translation,) the sections of that code, (196 and 152,) for which articles 17 and 18 of the present law were substituted, are given in the former language, in the same paper, and the Greek original of all of them is subjoined.

In March, 1844, as before stated, the constitution of Greece now in force was adopted. The provisions of that instrument, immediately bearing on the point now under consideration, are as follows:

"Article 1. The dominant (predominant, or prevailing) religion in Greece is that of the oriental orthodox church of Christ, but every other known religion is tolerated, and its services (or worship) are performed without hindrance, under the protection of the law, proselytism and every other encroachment upon the dominant religion being forbidden."

"Article 10. Every one may publish orally, in writing, and by the press, his thoughts, (sentiments or opinions,) observing the laws of the State."

"Article 103. All laws and ordinances, so far as they are repugnant to the present constitution, are annulled."

Neither the constitution nor the laws make any distinction between the criminal liabilities of citizens and aliens in cases like the present, except that, as will hereafter appear, aliens are in certain cases subject to banishment. And it is proper here to observe that Dr. King has never availed himself of the provisions of the laws of Greece respecting naturalization, nor exercised any political rights in Greece, but considers himself, and is considered by the courts and the government, as an American citizen, and an alien.

It should, moreover, be observed, that at the time of the commission of the alleged offence and of his trial he was vice-consul and acting consul of the United States, and had been recognized as such by both the American and Greek governments.

It will be remembered that protocol No. 33 of the conference of July 1, 1830, (B, p. 68,) styles the Greek church "the dominant church," and that the constitution in force before the accession of King Otho, and that adopted afterwards, all recognized the religion of the Greek church as that of the State, or the dominant (or prevailing) religion; but neither the protocol nor the constitutions define the relations between the church and State, nor does it appear that the Greek church

has any legal supremacy or superiority over other communions in Greece, except that the constitution requires not only the successor to the crown, but, in direct violation of the stipulations, witnessed by protocol No. 3, of February 3, 1830, (A, p. 66,) the regent and the guardian (or tutor) of a minor successor to the crown to be of the Greek faith, and that the laws make various provisions respecting the organization of the synod and its powers, the appointment of ecclesiastical functionaries, &c.

Proselytism is indeed forbidden by the constitution, but I find no legislation previous to or under that provision making proselytism a punishable offence, in either the proselyter or the convert, and by article 6 of the constitution no punishment can be inflicted without a statute imposing it. The extracts from the constitutions, protocols, and legislative enactments above cited and referred to are believed to embrace all the legal provisions of the public and penal laws of Greece which bear upon the question, whether the bare act of publicly "calling the Mother of God simply a woman, and (affirming) that she bare other children, and that the communion—that is, the body and blood of our Lord Jesus Christ—is bread and wine," unaccompanied by any reproachful, insulting, or malignant language, (for this is the crime of which Dr. King was convicted,) is an offence punishable under that law by imprisonment and by banishment from the realm of Greece. I now proceed to the history of the prosecution and trial.

By the 11th section of the ordinance of 1833, entitled "A declaration concerning the independence of the Hellenic church," it is enacted that "whenever it (the synod) is certified that any one is undertaking to disturb the church of the realm by heterodox teaching, by proselytism, or in any other manner, it appeals to the temporal power to apply a remedy to the evil, according to the laws of the state." It having been represented to the synod, in the course of the winter of 1850-'51, that Dr. King was thus disturbing the church, that body presented to the temporal authorities a complaint against him, the substance whereof is recited at the commencement of the paper annexed, and marked D, (p. 74.) Upon this a criminal prosecution was ordered, and an inquest had, before a body called the council of the court of correctional police, the functions of which are analogous to those of the grand jury in the United States and in England, with this difference, that the council ought to have evidence for the defence, as well as in support of the prosecution, and the accused appears, and is put to plead before it. The witnesses upon the inquest before the council are not sworn, but give a pledge to speak the truth by touching the hand of the presiding officer. The result of the inquest in the present case was, that a bill of indictment or act of accusation was found against Dr. King, and he was sent down for trial at the bar of the court of correctional police. The record of the proceedings before the council, including the bill found, is given in the paper annexed, marked E, (p. 78,) and the testimony of the witnesses, as taken down by the council, and subscribed by the witnesses, will be found in the paper annexed, marked F, (p. 81.) It is proper here to notice that the testimony of these witnesses, afterwards repeated and sworn upon the trial, together with that of Lycurgus and Melidon, (pp. 136, 137, 138,) given at the trial, and recited in the record of the proceedings on trial, a translation of which

record is hereto annexed and marked K, (p. 130,) constituted the *entire* evidence in behalf of the prosecution, and that the papers produced and referred to in the testimony of Glines and Kyriakoulas, were not received in evidence nor allowed to be read either upon the inquest or the trial. It is for this reason that, though referred to in the record, (which, by law must embrace the whole evidence,) and though the prosecuting attorney was most improperly allowed to refer to their contents, as well as to much other matter not in proof, upon the trial, they were not furnished by the recording officers upon a demand in behalf of the undersigned for copies of the whole record and evidence.

By the Greek code of criminal procedure the finding of the council upon an inquest is subject to appeal, and upon an appeal the case is heard before the council of the court of appeals, and may then be carried to the areopagus, the highest judicial tribunal of Greece. All these proceedings take place before the trial, and the hearing in both the last-mentioned courts is upon the record of the proceedings of the councils alone.

In the present case, upon the finding of the bill by the council, the respondent appealed to the council of court of appeals, (see G, p. 109,) which sustained the finding, as appears by the record, a translation of which is annexed and marked H, (p. 113.) The case was then carried up to the areopagus, (see I, p. 118,) which affirmed the judgment of the council of the court of appeals as to the application of the 17th article of the law against reviling, but reversed it as to the application of the 18th article, and the respondent was now finally sent down for trial. A translation of the proceedings before the areopagus is annexed, and marked J, (p. 121.) The trial took place at Athens on the 22d February, (4th March,) 1852. The record of the proceedings on that occasion will be found in the paper before referred to, and marked K, (p. 130,) and the judgment of the court, setting forth the facts, found by it on trial the grounds of conviction, the sentence, and the motion for, and decree of, the banishment of the respondent, in the paper annexed marked L, (p. 147.)

The case was now again carried up to the court of law in the last resort, the areopagus. In this court the hearing was upon the record of the court below, including the testimony as taken before the council, and the court affirmed the judgment of the court below as regards the general finding of guilty, under the 17th article of the law against reviling, &c., and as to the decree of banishment of the respondent, but reversed it as respects the conviction under the 18th article, and for that cause reduced the term of imprisonment by one day. The record of the proceedings before the areopagus, including the causes of reversal assigned, will be found in the paper annexed, marked M, (p. 158.)

I now proceed to inquire whether these several judgments are warranted by the evidence and the law of Greece thereto applicable. And first, as to the proof of the facts charged in the bill, and found by the court of correctional police.

To borrow the convenient phraseology of another branch of criminal jurisprudence, the bill presents a general *charge* of an offence defined by law, and *specifications* of the particular acts alleged to have been

committed by the respondent, and which acts, as is insisted by the prosecutor, make out a case of the offence contemplated and made punishable by law. It is obvious, upon the general principles of criminal law, which must be presumed to govern the action of the courts of Greece, as well as those of other civilized communities, that, under such a bill as this, no proof of any criminal acts, (except mere matter in argumentation affecting only the quantum of punishment to be inflicted,) not specified in the bill, could be legally offered or received, (see judgment of the Areopagus, M 3, 4, 5, pp. 167, 168;) that the finding of the court sitting in pays must be limited to the facts so specified; and that both the facts thus specified and those found, must be of such a character as to constitute the offence of which the respondent is accused.

Under the Greek code the right of jury trial is not allowed in prosecutions for offences of the class of which Dr. King was convicted. The court finds the facts, and sets them forth in what is called the recitatory part of its judgment, in the manner of a special verdict, and in an adjudicatory part, pronounces upon the criminality or innocence of the act found, applies the law, and sentences or acquits the prisoner.

For the more convenient examination of the evidence, I have collected, from the depositions of the witnesses, the testimony applicable to each specification, and arranged it under the head to which it belongs, so that it may be seen at once how far any particular fact charged is supported by the proofs. This statement, which embraces the *entire* evidence for the prosecution, will be found in the paper annexed, marked N, (p. 174.) I have also classified and arranged, with reference to the specifications, the facts found by the court of correctional police, and thus the specifications, the evidence, and the finding of the court sitting in pays, or what may be called its special verdict thereon, may be readily compared. This classification is annexed, and marked O, (p. 192.) Although the court finds that the respondent applied the epithet "foolish" to those who held certain doctrines, (1,) (7,) (9,) and that he said that the worship of the holy images was "idolatry," it will be seen, upon an examination of the testimony, that this finding is totally unsustained by proof, and it does not appear that the respondent, on any occasion, used any language implying ill-will or malevolence, or that he ever uttered an opprobrious expression in reference to the doctrines of the Greek church, or those who profess them, except that he called the monks "deserters (rebels, apostates) from the world," and that, on one occasion, he applied a hasty term of reproach to the ignorant and hot-headed youths who had evidently been sent to his house to entrap him; both of which latter facts the court considered immaterial, as they are not charged in the bill, nor embraced either in the specifications or finding of the court.

It is specially noticeable also, that the only evidence under specification, (3,) except the vague statements of Demides and Poeonides, is the testimony of Demahes, that in reply to a question put by the witness in a *private* conversation, (which certainly does not come within the statute,) the respondent avowed his disbelief of that doctrine of the Greek church, and, as to specification (2,) it is evident that the offence thereby imputed in the denial, *not* of the doctrine of *transubstantiation*,

but of the *saving efficacy of the communion*, while the offence found by the court is the denial of transubstantiation. And this is a point not without importance, because the expression of these opinions constitutes the two particular acts (and the only acts) solemnly adjudged to be offences, punishable under the 17th article of the law against reviling.

The court further finds that the respondent, in his teachings, "had no other hearers but the children of the orthodox eastern church." This statement, unimportant indeed in itself, is not only wholly unsupported by the evidence, but it is notoriously contrary to the fact, and there is not a syllable of testimony to sustain the further finding in respect to the respondent's communication with Melidon, or the equally unimportant finding in respect to the hoisting of the American flag. The court, in all probability, drew the proof of these facts, as well as its legal conclusions, from the argument of the attorney general, who, as will appear hereafter, was allowed to indulge at the trial in a latitude of discussion, and in an irregular and oppressive course of proceeding, little creditable either to himself, or to the court which permitted it, in defiance of the objections and remonstrances of the respondent's counsel.

It is doubtless also to the improper influence of this officer, who was probably (erroneously it is to be hoped) regarded by the court, as on this occasion, the authorized expositor of the will of the government, on whose good pleasure the judges of all the Greek courts depend, that we are to ascribe the extraordinary conduct of the court, in disregarding the solemn decision of the areopagus, that no violation of the 18th article of the act was embraced in the specifications of the bill, and in proceeding to convict the respondent under that article, although the areopagus had virtually ordered the bill of indictment to be amended, by striking out the part charging an offence against it, J, (p. 128, 129.) It is true the court attempts to justify this apparent violation of the law by declaring (p. 154,) that facts coming within the purview of that article, appeared at the trial; but, upon reference to the record, K, (pp. 136, 137, 138,) it will be seen that the only additional evidence was the unimportant hearsay testimony of Lycurgus, and the irrelevant deposition of Melidon, neither of which, (to say nothing of their inadmissibility, according to the decision of the areopagus, M, (p. 158,) for any other purpose than as matter in aggravation,) affords the slightest support to the conclusions of the court.

These unsupported findings of the court, and this *pro tanto* illegal conviction, are indeed not very material as regards the question whether the conviction under article 17 is sustainable; but, they have an important bearing on the inquiry with which I am charged, "whether the trial of Dr. King was conducted, in all respects, in a fair and legal mode," because they characterize unmistakeably both the intelligence and the *animus* of the tribunal which adjudged them.

By the 81st, 92d, and 397th articles of the code of criminal procedure, the judgment of the court must be not only publicly pronounced, but reduced to writing, and the grounds of it distinctly stated; and it would appear that it is not sufficient to set forth simply the facts found, and then the general conclusion that the respondent is guilty,

under the provisions of a particular article of the criminal code ; but the practice is, and so the word above quoted seems to imply, that the judgment state what particular facts found to have been committed by the respondent, are adjudged by the court to constitute the crime of which he is pronounced guilty. In other words, the court must first find a special verdict reciting the acts proved to have been committed ; it must next adjudge that such or such acts do constitute the crime made punishable by such an article of the penal code ; and lastly, it must declare the respondent guilty of such crime, and pronounce the appropriate sentence.

In accordance with these requirements of the law, and this practice, the court of correctional police, in its judgment in the case under consideration, L. (pp. 151, 152,) after reciting a number of facts, many of which are totally irrelevant to the matter at issue, proceeds to select (p. 153,) two acts, before found in the recitatory part of the judgment to have been committed by the respondent, namely :

First. The calling the Mother of God simply a woman, and affirming that she bare also other children, and—

Second. Teaching that the communion, that is, the body and blood of our Lord Jesus Christ, is bread and wine ; and solemnly to adjudge that the public utterance of these opinions, constitutes the offence of “attacking by malevolent expressions the dogmas, the ordinances, and the customs of the eastern church, in violation of article 17, and of “expressing such principles, opinions and sentiments, as are repugnant in general to the grounds of religion and morals,” contrary to article 18 of the penal law.

It is particularly to be noted that, although the court, not only without evidence, but against evidence, had found that the respondent had styled “foolish” and “idolaters” those who held certain doctrines, and practised certain observances of the Greek church, yet it does not find that the particular “expressions” adjudged to constitute the crime of which the respondent was convicted, were accompanied by these, or any other opprobrious or offensive language, and it evidently attaches no importance to the use of those epithets, as a ground of conviction. The court rules that the naked expression of these two heterodox opinions constitutes the offence of “attacking by malevolent expressions the dogmas of the oriental church ;” and persons acquainted with the religious opinions of some of the highest personages of the realm, and with the politico-religious relations of Greece, may easily imagine reasons of policy for both the finding of fact and the legal adjudication of the court.

The further adjudication of the court, that “principles, opinions, and sentiments, contrary to religion, are the whole of his teaching,” is evidently not an additional legal conclusion, but a mere rhetorical flourish by way of aggravation of the crime found to have been perpetrated, and indeed the judgment, so far as it is founded on a violation of article 18th, here contemplated, was reversed by the areopagus. It will be remarked that the particular doctrines of the Greek church, the denial of which is adjudged to be a crime, are not specified in the finding of the facts, or the adjudication thereon, and it may be said that as the Greek church is the religion of state, the court, *ex officio*, takes notice of

its doctrines, without proof or formal recital; but as a proper matter of form, they ought to have been distinctly set forth. We have pursued our examination of the evidence, and of the conclusions of the court thereon, to the final judgment of the court of correctional police, and are now to inquire how far that judgment was in accordance with the law of the land. The first question naturally is, what is the true force and meaning of the words to "attack by malevolent expressions," used in the 17th article of the law against reviling.

The word employed to designate the class of offences made punishable by this law, implies *malice*, in both the legal and the common English acceptation of that word, coupled with an injury too, or at least an attempt, to injure the person or character, or wrongfully to wound the self-respect of another, or with a contumelious abuse of things which the law protects against mockery, insult, and profanation, and it is believed that such malice and such wrong doing must be established, in order to sustain a conviction under that law. It has been before observed that the 17th section of the law in question, is borrowed from an article in the French code, enacted at a period (1822) when the tendency of French legislation was rather to restrict than to enlarge the liberty of opinion, of speech, and of the press. The Greek phrase corresponds very nearly to the verb outrager, (it is a *species*, of which outrager is the *genus*,) as used in the French law C, (p. 69,) and is perfectly well expressed in the German version of the penal code, published by the government at Athens, as of equal authority with the Greek text, (and in fact, as before observed, it was the original, the Greek being a translation from it,) by "durch Ausdrücke des Hasses angreifen," (attack by expressions of hatred,) and in English by "attack by malevolent expressions."

It is not pretended that the word, properly translated "malevolent," has, in Greek jurisprudence, any technical signification restrictive of its common meaning, which is, as nearly as possible, equivalent to that of "malevolent," and it unquestionably implies malice, hatred, ill-will, a morally culpable state of feeling towards the object, concerning which, or the person to whom the expressions deemed by the law criminal, are uttered. The French law is at least as comprehensive as that under consideration; but the Duke de Broglie held that the article of the French code, already cited, would not bear the interpretation given by the court to the corresponding enactment of the Greek law, because "it would be violating the liberty of worship to interdict to this or that religion the right to launch an anathema against every other, and to proclaim itself exclusively the truth." And the distinguished jurist, Chassan, declares that "one may say that at the present day the liberty of discussion and of criticism in religious matters is inviolable."—Chassan des délits de la parole, tome I, pp. 276, 282.

It is worth while here to consider what would be the inevitable consequences of this decision, if it be allowed to stand, to religious liberty in Greece, as it respects other denominations than that to which Dr. King belongs. The penalty imposed by article 17th, of the law under consideration, attaches to any one who assails by malevolent expressions the doctrines, &c., of the Greek church, or of *any other* religion (or sect) existing by permission of the government. It is not known

that the government gives formal permission to any other sect to celebrate its worship in Greece; but no such permission is necessary, because the right to perform its religious rites and observances is secured to all sects, without distinction, by the original constitutions of Greece, the terms of the protocols, and the constitution of 1844, which by the first article decrees this right to extend to "every known religion."

Legal ingenuity might indeed suggest, upon a prosecution for malevolently assailing any "other religion" not proved to have received the formal consent of the government to its existence in Greece, that the act complained of, however contrary to the spirit, both of the law and of the present constitution, did not come within the statute, but it is believed that such a view of the case would be rather specious than solid, inasmuch as the protocols and the constitution put all religions in this respect on a footing of equality, *without* any formal consent of the government, and therefore all must be *equally* protected by the law, or the statute itself must be adjudged void, as contravening these fundamental principles.

The religious sects actually existing, and publicly worshipping in Greece, are, besides the Greek, the Catholic, (king's chapel and many other churches,) the Lutheran, (queen's chapel,) the Episcopalian, (British legation chapel and at least one other,) the Baptist, and perhaps other Christian denominations; and Dr. King, with occasional interruptions from priestly intolerance and popular bigotry, has been "permitted" publicly to preach the doctrines of his religion, the Calvinist Congregational, for more than twenty years; and to these Christian sects may be added the Mohammedans, whose religious liberties are secured, both by treaty and by the constitution.

By the decision of the court of correctional police, in law, it is evident that none of these sects can publicly preach its doctrines, or even read and expound its own creed and liturgy; and the court, in its blind zeal to serve the cause of Greek intolerance, has solemnly sanctioned principles, the influential application of which would render the public exercise of the religious worship of *any* sect impossible. By the decision in law, the Catholic cannot publicly express his opinion upon the procession of the holy spirit, declare that baptism by immersion is not indispensable, defend communion in one kind, advocate the supremacy of the Pope, or maintain the validity of the decrees of the general councils of Catholic christianity held since the separation of the eastern and western churches, because, by so doing, he would utter "malevolent expressions" against the doctrines, the ordinances, and the customs of the oriental church; the Lutheran cannot expound his views of consubstantiation, or any of the characteristic opinions of his church; the Episcopalian cannot publicly use those portions of his liturgy and other services which declare that the holy spirit proceeded "from the father and the son," and still less can he recite that article of his church which condemns "the *idolatrous* sacrifice of the mass;" no Protestant can read and expound the text, "Woman! what have I to do with thee?" or the numerous passages of Scripture which speak of Christ as "the son of the woman," or "born of woman;" nay, the Greek himself cannot maintain the very dogmas, the denial of which is adjudged to be a crime, and still less can he fulminate the anathemas which his

own euchologion, (breviary,) as a part of the regular service of his church, launches against all who dispute or doubt the doctrines of his religion.

Such illustrations of the absurd consequences which must follow from this decision might be multiplied in infinitum.

No religious teacher can maintain, or even explain his faith, without more or less directly denying and attacking the doctrines opposed to his own; and to affirm that "the bare calling of the Virgin Mary a woman, or denying the doctrine of transubstantiation," is a crime under the 17th article of the law against reviling, is not only a palpable misconstruction of the law, but a wretched mockery of the plainest principles of common sense.

Nor has such ever been the practical construction of the law. It is notorious that all the sects above named perform their public worship, and maintain their own religious views, without reserve or restraint. The Catholics particularly, are open and bold in the preaching of their own faith, and in the condemnation of religious opinions adverse to their own; and, though there is no reason to believe that they exceed the bounds of a proper and decent freedom of discussion, yet it is well known that they do not hesitate to argue the sorest points of difference between themselves and the Greeks, with all the openness which a due regard for decorum would permit, in those countries where there is the largest liberty of speech. They have thus incurred the bitter enmity of the Greek clergy, and the Age, the organ of the clerical party in Greece, is clamorous in its denunciations of the arrogance which practises, and the tolerance which permits, this system of attack upon the standards of the oriental faith.

But, though these facts are notorious and grievously offensive to the priesthood, and the more bigoted laity of the Greek church, no criminal prosecution of the European teachers of other creeds was ever dreamed of, and this, no doubt, for the reason that they are well understood to enjoy a foreign protection, against which the utmost malice of religious intolerance, however aided by the subserviency of judicial tribunals, would struggle in vain.

With the exception of the various attempts to subject Dr. King to legal persecution, I have heard of but a single instance of a criminal prosecution for an offence against religion.

I am not precisely informed respecting the details of the case, but, as stated to me, it is substantially this. An ecclesiastic of the Greek religion embraced Catholicism, in one of the Hellenic Islands, and openly denied the doctrines of the Greek creed, at variance with the faith he had now adopted. He was arrested, and criminal proceedings commenced against him; but upon a representation of the British minister, upon the ground, among others, that he was an Ionian, and of course entitled to the privileges of a British subject, the prosecution was abandoned, and the culprit set at liberty.

It is evident that the nationality of the offender, (the alleged crime having been committed in the Greek territory,) no more exempted him from punishment than the like plea ought to avail Dr. King, and he was released, not because of his innocence, but because his condemnation, at the risk of a rupture with Great Britain and the Catholic powers

of Europe, was too dangerous an experiment to be at present hazarded. On the other hand, as preaching or other teaching forms no part of the regular services of the Greek church, its ordinary worship does not offer much occasion for the discussion of points of faith; but, as before noticed, its breviary contains anathemas, cursing, with great particularity, those who dissent from the leading articles of its belief, to be publicly recited on certain feast days, and it is notorious that the Greek clergy, and especially the public journals devoted to the interests of that church, are loud in their condemnation of all religious opinions at variance with their own, though the fear of European resentment leads them to exercise some caution in respect to the mode of expression. But, with regard to Dr. King and his religious doctrines, there has been no such forced reserve, and both his faith and his known irreproachable character, have been publicly assailed, misrepresented, and traduced, by eminent clerical personages and the periodicals under their control, with a reckless disregard of truth, and a shameless indecency, of which, happily, the most licentious American and European journals seldom exhibit examples.

This unbridled license of abuse the conservators of the public peace have not thought it worth while to repress, and the zealous prosecuting officer, whose religious sensibilities the affirmation of the humanity of the virgin, and the denial of transubstantiation, so sadly shocked, that he thought the perpetrator of such a crime worthy, not merely of the punishment denounced by law against those who malevolently assail the dogmas and the customs of the orthodox oriental church, but even of final exile from virtuous Greece, as a dangerous enemy to "the fundamental grounds of religion and morals in general," found nothing offensive in the public and formal anathematizing, by the Greek synod, of Dr. King, and of the religious opinions common to various sects, which, in more than one American State, count adherents more numerous than the entire population of Greece, or in the libels upon his character, with which the press, controlled by the priesthood, has daily teemed.

In fact, Dr. King and his creed have served as a convenient scape-goat, to bear maledictions, and to hint threats, intended for other teachers and other doctrines, as well as for himself and his faith—or, perhaps, as an experiment, to test how far the Greek government would sustain, or foreign powers permit, the encroachment of an ambitious and an intolerant priesthood, upon the guaranties of the independence of Greece, and the solemn sanction of the constitution and laws.

It may seem superfluous further to discuss the legal character of the judgment of the court of correctional police; but the full examination of the case requires some notice of the question, whether, if the construction of the 17th article of the law against reviling, by the court, be deemed correct, the law itself is not to be regarded as annulled by the constitution, if not as a violation of the guaranties witnessed by the protocols already cited.

I shall not dwell on this latter point (the discussion of which belongs rather to the domain of international law than to the particular inquiry with which I am charged) further than to remark that this construction

is evidently a violation of the spirit and purpose of that compact; and, as to the former, I shall confine myself to little more than a reference to the sections of the constitution which appear to me to bear upon the question.

The first article of that instrument, quoted at length on page 10, declares "that every known religion is tolerated, and its services performed without obstruction, under the protection of the laws." The tenth article secures to "every one the right of publishing, 'orally, in writing, or by the press, his opinions, observing the laws of the State;'" and the hundred and third article annuls "all laws and ordinances repugnant to this constitution." The Greek religion is almost the only Christian sect, the services of whose worship do not, necessarily or habitually, include the public preaching and teaching of its doctrines; and the framers of the constitution were undoubtedly aware that in pledging the government to the protection of the "services" of other religions, they secured the liberty of the pulpit, as, by an additional article, they provided for the general freedom of speech, and of the press. No religious teacher can honestly perform this portion of the public "services" of his religion, without occasionally stating, expounding, and maintaining his own views of Christian doctrine; nor can he always avoid doing this in terms which amount to a positive denial of the truth of the articles professed by other sects. But by the decision of the court, the affirmation of the humanity of the virgin, or that the bread and wine of the communion service do not undergo a miraculous transformation, (and consequently the denial of the contrary doctrines,) though unaccompanied by any expressions of hatred, malice, or ill-will, for no such are proved or found in the present case, is, in and of itself, a "malevolent expression," within the meaning of the 17th article.

It can require no argument, beyond the simple statement of the entire proposition, and of the facts, to which it is applied, to show that if this is the true construction of the law, then the law itself is repugnant to the constitution, and, of course, annulled by it. Similar considerations apply, with equal force, to the tenth article of the constitution. The liberty of publishing thoughts, opinions, and sentiments, thereby secured, is without any other exception, limitation, or condition, than that of observance of "the laws of the State."

But these laws must be laws in accordance with the spirit of the constitution; and were legislation now, for the first time, proposed on this subject, it could not be contended that this article had no other effect than to commit this whole question to the discretion of the legislative branch, and that that branch could enact laws, the effect of which would be to take away the liberty of speech, and of the press, altogether. Laws are to be tried by the constitution, not the constitution controlled, or even expounded, by law. The object of the whole instrument, and more especially of this article, was to enlarge the liberty of the subject, and abridge the powers of the legislative as well as of the executive departments; and the proposition that it can be controlled, or even interpreted, by previously existing laws, except as merely regards the legal meaning of established technical terms, or that it can be nullified by legislation, is an inversion of the principles of legal construction. The article must be held to have a force and

significance in itself, without aid *ab extra*, and the only interpretation that can fairly be given to it, is that by virtue of it all men may freely use the natural liberty of speech, subject only to such legislative restrictions as shall secure the observance of that other universal law, *sic utere tuo ut alienum non laedas*.

Upon these principles, then, the 103d article of the constitution, if it did not annul the 17th article of the act against reviling, at least forbade the construction which the court has given to it. But I proceed with the history of the case.

The judgment of the court in criminal cases is publicly pronounced by the court; it must then be reduced to writing and subscribed by the judges, and as before noticed, their written judgment must, by article 81 of the code of criminal procedure, distinctly set forth its grounds; by article 92, the judges are required to state therein the grounds of their conclusions; and by article 397, it must contain a statement of the "causes" for which it is rendered.

In the present case according to the K, (p. 145) the judgment pronounced was, that "the said Jonas King was adjudged guilty of having, in the years 1850 and 1851, in public discourse and teaching here, attacked by malevolent expressions, the doctrines, ordinances, and the customs of the eastern orthodox church, and expressed principles, opinions, and sentiments, repugnant in general to the grounds of religion and injurious thereto."

The written judgment prepared and filed, in obedience to the requirements of the law, contains the facts found by the court, L, (p. 152,) the adjudication that the affirmation of the humanity of the virgin, and the denial of transubstantiation, are "malevolent expressions," contrary to the form, force, and effect of the statute, (p. 153,) and the conclusion (pp. 154, 155,) of the guilt of the respondent, in the same words as before cited.

This judgment was signed by the justices, and it will be observed, that it is thus far no where found as a fact, or adjudged, or, so far as it appears, contended by the attorney general, that the respondent was "by his manner of life, his character and his conduct, pre-eminently dangerous to the common safety, and to morals."

But "after the publication of this judgment," the attorney general moved that the respondent be sentenced to imprisonment, the costs of the trial, and to exile from the Greek State, and he cited, in support of the latter branch of this motion, article 34 of the penal code, which provides that persons convicted of the class of offences charged against Dr. King, shall be "subjected by judicial sentence to the special surveillance of the police, for a period of from two to ten years," "whenever such persons by their mode of life, their character and their conduct, would be pre-eminently dangerous to the common safety, and to morals," and article 37 of the same code, which declares that "in all cases where *citizens* are liable to such surveillance, *aliens* shall be banished from the country and transported beyond the boundaries."

The motion for the exile of the respondent was resisted by his counsel, on the obvious ground that no facts were proved or found to bring him within the purview of the 34th article, and that the judgment already pronounced and entered of record not having adjudged him to be

a person dangerous to the common safety and to morals, it was now too late to move his banishment, but the court overruled the exception, and allowed the motion, first pronouncing a new adjudication, (p. 157,) that the respondent "inveighing so scandalously against the orthodox eastern religion, its canons, traditions, and customs is, in behavior and conduct, pre-eminently dangerous to morals, which are the basis of the gospel and of this eastern religion," and therefore sentences him to imprisonment and exile. It is observable that this new and distinct adjudication is founded on a totally different state of facts from the general conviction, and that the respondent is not adjudged "dangerous to morals" because of the "malevolent expressions" of which he had been found guilty under the 17th and 18th articles, but because he had "inveighed against the eastern church, its canons, traditions, and customs;" a charge not sustained by specific proof, nor embraced in the facts found by the court. The 37th article above referred to does not, in terms, or by any obvious implication, make the banishment of aliens in the case supposed perpetual, nor does it contain any provisions in regard to its duration.

Upon general principles it should seem that it should be ordered, by the sentence, for some fixed period, within the time of duration specified by article 34, for surveillance in the case of citizens, and if this be so, the sentence is so far evidently void for want of limitation of time. But this point does not appear to have been taken by the counsel for the defence, and is therefore perhaps less important than it would otherwise seem.

It would be a trifling with common sense to spend time in arguing against so absurd a decision as that of the court on the point we are considering. It is apparently irregular, as being out of time, it is evidently totally unsupported by any facts proved or found by the court, and it is at the same time wantonly and barbarously oppressive.

Before leaving for the present the proceedings of the court below, it is proper to notice that in point of fact the "small disturbance" testified to by Glines, (p. 90,) and found by the court as "a scandal among his hearers," was a violent and alarming riot, got up by this Glines and the other witnesses for the prosecution, because Dr. King refused to continue the discussion, and which was suppressed with no small difficulty, (and rather by the fear of the mob of the consequences of attacking the consular residence than by the efforts of the police,) and this was so notorious at Athens that it could not but have been known to every member of the court.

I now proceed with the subsequent history of the case. The code of criminal procedure appears to contemplate a prompt execution of the sentences of criminal courts, but I do not find any express limitation of the time within which they must, in cases like the present, be carried into effect. But as, by the general provisions of the case, proceedings by way of appeal, or exception, or in error, must be filed within five days from the publication of the judgment, and as, in cases where the punishment is imprisonment, no such proceedings can be filed until the imprisonment has commenced, and is duly certified by the jailor, it is evident that the prisoner can take no advantage of any cause of reversal

unless he be committed within the term of five days. I refer to these provisions because it has been unjustly and disingenuously said that Dr. King made himself a voluntary martyr, by spontaneously *seeking* an imprisonment which would not otherwise have been inflicted. It is true that he notified the attorney general that he desired to be committed before the expiration of the term of five days, in order that he might avail himself of his just exceptions against the judgment of the court of correctional police, which he could not otherwise do; but it is a gratuitous and wholly unwarranted assumption that the sentence would not have been executed if Dr. King himself had not requested to be committed. It was his belief that the public authorities meant to lull him into security by suspending the execution of the sentence until it was too late for an appeal or other proceedings for reversal, and then to enforce it. It is not true that he had any the slightest reason to expect a pardon or other indulgence in respect to the enforcement of the sentence, and the undersigned has no doubt that it would have been carried into effect with unrelenting rigor had its execution not been first delayed by the proceedings for reversal, and had not apprehensions of the just resentment of his government afterwards induced the public authorities to inflict an imprisonment of little more than a nominal character, and to suspend his transportation beyond the boundaries.

The causes of reversal assigned by Dr. King's counsel on the hearing before the areopagus are numerous; some of them appear to be conclusive, and they are in general at least plausible. They are detailed at length, with the resolutions of the court upon them, in the final judgment of the areopagus, M, (pp. 158, 173;) but as I have already anticipated the argument on the most important of them, I do not deem it necessary to attempt a full discussion of them, and I shall confine my remarks to the second and third exceptions, (pp. 161, 162, and 168.) Among the causes of reversal of a criminal judgment enumerated in article 407 of the court of criminal procedure, "§ 11, the erroneous application or the false construction of the criminal law" and the jurisdiction of the areopagus, which is purely a court of law upon exceptions taken or errors assigned, is the same as that of the higher judicial tribunal of England and the United States in the like case.

If, therefore, it appeared upon the record that the facts found by the court below, and by that court adjudged to constitute an offence made punishable by the penal code, did not in law amount to a crime, it was clearly the duty of the areopagus to reverse the judgment. It is believed to have been already sufficiently shown that the facts found did constitute an offence against the law, and the judgment of the court of correctional police consequently presented a clear and unequivocal case of "the erroneous application and false construction of the criminal law," and of course a proper case for the interference of the areopagus; and the second and third causes of reversal assigned by the respondent's counsel rest expressly upon the ground that such error had been committed, and that it not being a question of fact, the matter came within the jurisdiction of the areopagus.

The court in its judgment evades the exercise of this jurisdiction, and disposes of the whole question in a single brief period, expressed with studied obscurity, throwing the whole responsibility upon the court

below, and adjudging nothing, except that it could not interfere with the proof of a question of fact—which, certainly, the counsel for the respondent had not asked it to do.

The court says, (p. 168,) “whereas, the court of correctional police, weighing (or considering,) *in its sovereign jurisdiction*, the *actual facts*, resolved (was of opinion) that they do constitute the offence contemplated by the said seventeenth article, (therefore) the areopagus cannot interfere in the proof (establishment, verification) of said facts, inasmuch as the legal character of the act is rightly defined (or expressed.)”

Upon a hasty reading of this resolution it might appear that the court intended to adjudge that the facts found by the court below were rightly characterized by it as an offence, or, in other words, that those facts did constitute an offence against the law; but this is by no means the true construction. *Act* is a term of art in the Greek law. The third article of the code of criminal procedure says: “Crimes, offences, and misdemeanors bear the common appellation of *act*; and in this designation, also, are embraced (offences of) omission.”

The meaning, therefore, of this clause is no more than this, that the court below, in pronouncing and recording the conviction of the respondent for “attacking, by malevolent expressions, the doctrines, &c., of the eastern church,” used the proper words to designate or describe the offence made punishable by statute.

But upon the question raised by the counsel, whether the words found to have been spoken by the respondent, and adjudged by the court below to be “malevolent expressions” within the meaning of the statute, were or were not an offence against that statute, the court gave no opinion, but sheltered itself under the same subterfuge of which it had availed itself on the appeal from the finding of the bill¹ J, (p. 126,) namely, that the pronouncing upon the legal character of an act is an act of “sovereign jurisdiction” properly belonging to the inferior tribunal, which, sitting in pays, finds the fact; and, consequently, the areopagus refused to entertain cognizance of a cause of reversal expressly provided for by statute, to wit, “an erroneous application or a false construction of the criminal law.” This is, in effect, a decision that when an inferior criminal court uses the words of a statute in describing the offence of which it convicts a prisoner, its judgment is irreversible, although it appears of record that the acts charged and found do not constitute an offence against the statute referred to. And, consequently, if, after having found the facts set forth in the recitatory part of this judgment, the court below, in the exercise of its “sovereign jurisdiction,” has been “persuaded” that they constituted the crime of treason, or larceny, or burglary, instead of that of “attacking the Greek church by malevolent expressions,” and had, accordingly, convicted the respondent of one of these crimes, *using, in “defining the legal character of the act,” the words of the statute which make such crime punishable*, the areopagus could not have interfered, and the judgment would have been conclusive, provided, always, the offence of which the respondent was convicted was one which the court was competent to try. This is a perfectly fair *reductio ad absurdum*, and if the present case be not one where the areopagus can correct a “false construction or erroneous application of the criminal law,” then no such case can.

be supposed, and the provision to that effect is a nullity. It is for the determination of exactly such questions as this that the areopagus is instituted. The evidence is made part of the record, to enable it properly to determine them; and in evading the consideration and decision of the question raised in this case, the highest legal tribunal of Greece has shrunk from the performance of one of its plainest and most obvious duties. The same considerations apply to the argument of the court on the sixth (and seventh) causes of reversal.

I do not deem it necessary to follow the court in its resolutions upon the remaining errors assigned, because I am persuaded that it has been already shown that the judgment of the court of correctional police was fatally erroneous, and that the court of areopagus, in the exercise of its ordinary legal jurisdiction, ought to have reversed the same. It does not fall within my province to inquire how far the decisions of these courts are conclusive in respect to questions affecting the personal rights and liberty of aliens, or to what extent the American government can lawfully interfere to protect a citizen unjustly and illegally condemned by a foreign tribunal; but I may be pardoned for suggesting a doubt, whether the principle of the sacredness of judicial proceedings, regular in mere form, applies with equal force to cases where, as in the present, the judgment involves the construction not only of the statute and common law of the State, but of its constitution, (which may be said to form a chapter in the law of nations,) and also of the formal guaranties of treaties between other foreign powers, affecting the rights of residents within its territory.

I omit also, as foreign to my instructions, all discussion of the questions whether, upon general principles, any government can delegate to an inferior court the exercise of so high and sovereign a prerogative as the expulsion of an alien from its territory, and whether the respondent was entitled to any privileges or exemptions, by reason of his consular quality.

Thus much for the purely legal questions involved in the inquiry intrusted to me. But I am instructed, further, to ascertain whether Dr. King's trial was "conducted in all respects in a fair and legal mode." I have already given my reasons for thinking that the judgment against Dr. King was illegal; and though, so far as the mere observance of the form and order of proceeding prescribed by the code of criminal procedure is concerned, I am aware of no exceptions not noticed in the various causes of reversal assigned by his counsel, I have been forced to the conclusion that the trial was not fairly or impartially conducted.

On the day before the trial (21st February, 4th March, 1852) a placard was posted up in many public places, and industriously circulated through the city, summoning the "Christ-loving" population of Athens to attend the trial and condemnation of the "notorious false apostle, Jonas King." A translation of this handbill is annexed and marked P., (p. 195.)

In consequence of this, and other like means, a large and highly excited mob, whose most violent and vociferous leaders were priests, and some of the witnesses against the respondent, was collected at the trial, and permitted to insult the respondent and his counsel, to brow

beat and overawe his witnesses, and to cheer and encourage the false witnesses for the prosecution. The head of the police endeavored to suppress these riotous proceedings, but the pretended efforts to preserve order and decorum were of so feeble a character as, apparently, rather to stimulate and encourage the rioters than to intimidate and restrain them; and there is no doubt that this display of popular violence did seriously interfere with the free and fair conducting of the trial.

The president of the court evinced throughout a determination to sustain the prosecution and to obstruct the defence; he permitted the attorney general to devote a large part of the time consumed in his argument to reading and commenting upon certain works of religious instruction published in the name of Dr. King, but not offered in evidence, or in any other manner properly before the court, and reproved the counsel for the defence for objecting to this irregularity; and finally, in defiance of the 394th article of the code of criminal procedure, which secures to the "accused and his counsel" the right of concluding the argument, refused to hear the respondent in his own defence.

These facts, and others equally disgraceful to the administration of criminal law in this instance, are established by the testimony of witnesses of undoubted intelligence, impartiality, and integrity, and extracts from written statements by such persons will be found in the paper annexed, and marked Q, (p. 196.)

For the better understanding of some part of these statements, and as a key to the real motives of the prosecution against Dr. King, and of the persecutions to which he has for a series of years been subjected, it is proper here to remark, that many persons, both in and out of the Greek church, affirm that many opinions, practices, and observances, altogether repugnant to the doctrines and rites of that church in earlier ages, and to the teachings of its acknowledged standard of faith, have crept into its worship and the popular belief of its adherents, and are sustained as true and canonical by most of the clergy.

Upon these points there is no small difference of opinion among the Greeks themselves, and those who believe their church in some degree corrupted declare that their clergy as a body are very ill instructed, and, in fact, almost entirely ignorant of the real doctrines of the fathers of the church, and of other ecclesiastical standards of undisputed authority. The attention of Dr. King having been drawn to the subject long before he visited Greece, he published in America, about thirty years since, and of course before his visit, a volume upon this question.

Some years afterwards he printed another work on the same subject, also in the United States, and in 1845 a third, which was published in Greece. These works consisted mainly, and some of them altogether, I believe, of extracts from the fathers, and other ancient writers of acknowledged authority in the Greek church. For the publication of these a prosecution was commenced against Dr. King; but although the synod formally anathematized him, and his works, the prosecution was never brought to trial; partly, it is believed, because the public authorities who acted upon the question were men of a more just and enlightened spirit than their present successors, and partly, it is said, because the clergy themselves were unwilling to submit their teachings and their practices to so hazardous a test as a public com-

parison of them with the standards to which both parties proposed to appeal.

It is to the publication of these works, and not to the preaching of Dr. King, as I am fully persuaded, that both his persecutions and his prosecution are to be ascribed. The accusation of "malevolent expressions" in public teaching is but a pretext, and though many attempts have been made to entrap and provoke him into some unguarded language which might render him criminally liable, it is his books which have been used to make him odious to the populace, his books on which the prosecution relied to procure his conviction. These are the volumes referred to in paper Q, (p. 196,) as having been cited and commented upon by the attorney general in his argument, though the bill of indictment does not charge Dr. King with their publication, nor were they offered in evidence upon the trial, or in any manner proved or admitted to have been published by him.

In fairness to the court it ought to be stated that hearsay testimony does not appear to be inadmissible, even in criminal cases, by the Greek law, and the judge is at liberty to listen to *any* evidence which appears to him to have any tendency whatever, however slight, to prove or disprove the guilt of the accused, and therefore the admission of illegal or merely irrelevant evidence is not, in Greece, erroneous in law, however objectionable it may be as a matter of discretion. At the same time, in Greece, as elsewhere, such evidence must be offered in due time, and before the argument commences, in order that the respondent may rebut it; and moreover it must be pertinent to prove some fact alleged in the bill, and not a distinct offence.

No further "circumstances throwing light on the subject" have come to my knowledge, excepting some facts in relation to former alleged persecutions of Dr. King by the priesthood and the party controlled by it.

The publication of the books above mentioned, the public preaching of Dr. King, and the success of the schools established by him, are stated to have excited at first the jealousy, and afterwards the bitter enmity of the ecclesiastics of the Greek church and their most zealous lay adherents, as well as of that political party which makes the "interests of the church" its watchword, and Dr. King has, in consequence, been for years the object not only of various attempts to silence, and expel him from the country by legal proceedings, but of frequent public misrepresentations, defamation, and abuse.

Mobs have been repeatedly stirred up against him; and, on one occasion, he was believed to be in such danger of personal violence that he was advised to fly from the country as his only means of safety, and he accordingly retired, for some time, to the interior of Europe. He has been repeatedly denounced by the ecclesiastical authorities; and both he, his doctrines, and his printed works have been publicly and formally anathematized by the synod, with a bitterness of malediction which recalls the darkest period of the gloomiest and most intolerant ages of Christian history.

His teachings and the rites of his worship have been grossly misrepresented, his personal character traduced, and every engine that embittered hostility could devise, has been put in operation against him.

In these measures the *Age*, a Greek newspaper printed at Athens—remarkable for its habitual contempt of decency and of truth, and its infuriate malice towards all who do not share the views of the party whose mouth-piece it is; a paper which is the acknowledged exponent of the will, and the avowed organ of expression, of the politico-ecclesiastical party in Greece, as well as of the authorities of the church—has been the most conspicuous instrument.

I do not deem it necessary to burden this report with extracts from the columns of this sheet, and I will cite but a single exemplification of the system of persecution to which Dr. King has been subjected by this journal and its abettors.

In 1847, a swindler, named Simonides, notorious throughout Turkey, Russia, and Greece as an impostor, counterfeiter, and cheat, published in the columns of the *Age* a description of certain pretended “orgies” which he had witnessed at Dr. King’s house as religious ceremonies performed by him.

Simonides was well known as a special protégé, favorite, and instrument of the clerical party; and the truth of his statements, monstrously and palpably false as they were, were solemnly averred by the *Age* and by the great body of the Greek clergy, and Dr. King was in no small danger of personal violence in consequence of the popular excitement which these disclosures and the comments of his enemies upon them produced.

There is no doubt that some of those who were active in the propagation of these slanders were convinced of their truth; and the confident asseverations of distinguished ecclesiastics imposed even upon some persons of character and intelligence, whose personal knowledge of Dr. King and of the malice of his enemies, as well as the evident absurdity of the whole fable, ought to have taught them better things; but there can be no doubt that this libel was assiduously circulated and maintained by many persons eminent in the Greek church, and conspicuous in the political party identified with it, with a full knowledge of its absolute falsehood.

At present no man would be bold enough to deny the utter and complete groundlessness of the whole story; but no formal or public recantation or contradiction of the slander has ever been made by those who originated and put it in circulation, or any atonement or satisfaction offered to Dr. King. A translation of a part of this statement of Simonides’ is annexed and marked R, (p. 203.)

The foregoing account of the trial and persecutions of Dr. King may serve to characterize the treatment which he has received at the hands of the legal tribunals and of the clerical party of Greece, but it embraces but a small portion of the illegal annoyances to which he has been subjected during his long residence in that country.

In justice to the government, it ought to be said that it has frequently exerted its authority in protecting Dr. King from personal violence; nor is there any evidence that it has ever encouraged his assailants in any of the various modes of attack adopted against him, or that the late prosecution was commenced by its order, or in accordance with its wishes; but the undersigned regrets to say that, so far as he is informed, it has not expressed any disapprobation of the prosecution it-

self, or of the extraordinary manner in which it was conducted; and Dr. King complains that the judges selected to compose the court before which he was tried were, in great part, persons unworthy of public confidence, and notorious for obsequious devotion to influences hostile to him. The sounder portion of the Greek press, and, it is thought, of the Greek people, and especially of the Greek bar, including very many eminent persons by no means well disposed to Dr. King personally, or approving his course as a public teacher, is nearly unanimous, not only in condemning the course of persecution which his opponents have so long pursued, but the belief that his conviction was both unjust and illegal; and the undersigned has little doubt that his pardon, and the disgrace of the court which condemned him, would be acceptable to all that part of the Greek public, and of the legal profession, whose opinions are entitled to respect and confidence as those of enlightened men and jurists.

On the other hand, while Dr. King and his friends declare that his public preaching has been confined to the simple exposition and maintenance of his own views, without attempts at proselytism, or indecorous attacks upon the creed of the Greek church, and that the volumes which have excited such unsparing enmity against him are fair, full, and true representations of the doctrines of the standard authorities of the Greek church itself, it is alleged by his opponents, that his own imprudent and ill judged exhibitions of hostility to the State religion of the country, the protection of whose laws he claims, have given just cause for the jealousy and ill will with which he is regarded by the adherents of the Greek church; that he habitually assails, both in public, and in private discourse, the faith, and the objects most sacred in the eyes of its followers; that he covertly aims at proselytism, and that his printed works consist of garbled and disjointed extracts from the writings, and distorted views of the teachings, of the most revered authorities of the oriental church.

Of the truth of these charges I have seen no proof, but the meagre evidence which the record of the trial presents, as the result of months of preparation by synods, and schoolboys, nor, indeed, upon a mere *ex-parte* enquiry, could such evidence be expected to present itself, and I have not thought it incumbent upon me to study the works published by Dr. King, and pronounce upon their theological character, for the reason that the bill of indictment does not charge their publication as an offence, and I have supposed that all such inquiries, as well as any examination of questions of mere discretion or prudence, in the exercise of his clerical functions, were excluded by instructions which seem to confine my duties to the investigation of his purely legal rights, as an American citizen resident in Greece.

So far as the conduct of the Greek government, with respect to the late prosecution is concerned, it has been said that the public authorities doubted their own power to protect Dr. King from popular violence, by direct interference, and that it was thought, for this reason, expedient to suffer the prosecution to proceed to a conviction, which might appease public indignation, and then, without a formal pardon, to suspend the execution of the sentence indefinitely, unless some new imprudence on the part of the accused should compel them to carry it into effect.

I am far from insinuating that the Greek government itself has ever given currency to such views, and as, on the one hand, there is no evidence that it was instrumental in stimulating the prosecution, so, on the other, the confident assertions of some, that Dr. King would never have been committed but upon his own motion, and that no intention was entertained of enforcing the sentence of exile, is, to the best of my information, totally without authority, or probable ground of belief.

Such are the results to which I have arrived upon an *ex-parte* inquiry, conducted wholly without the assistance of Greek jurists, and with no other legal aids than such as are furnished by the record of the proceedings and the printed volumes of the laws of Greece.

I am abundantly aware that they may be modified by facts proved, or legal considerations suggested, in behalf of the prosecution, as by circumstances that may be made to appear in justification of the motives, and in palliation of the conduct of Dr. King's assailants, but, so far as I am able to judge upon a somewhat laborious examination of the law and the facts within my reach, I think myself warranted in concluding that the late trial of Dr. King was *not* "for any offence against the laws of Greece;" that it was *not* "conducted in a fair and legal mode;" that, "by law and usage," the fullest religious toleration, including public worship and public preaching is secured, and in practice allowed to, and of right enjoyed by, all Christian sects and teachers, who do not openly receive proselytes from the Greek church, with the single exception of Dr. King—and it is further my full conviction, that no prosecution of any subject of the great European powers for such offences as are embraced in the specifications of the bill of indictment against Dr. King, would, or ought to, have been allowed by the Greek government, or suffered by those powers.

All which is respectfully submitted,

GEORGE P. MARSH.

Hon. DANIEL WEBSTER, *Secretary of State*.

A.

Protocol, No. 3, of the conference held at the Foreign Office, the 3d of February, 1830.

Present: The plenipotentiaries of Great Britain, France and Russia.

Prince Leopold of Saxe Coburg, having been called, by the united suffrages of the three courts of the alliance, to the sovereignty of Greece, the French plenipotentiary has called the attention of the conference to the particular position in which his government finds itself, with relation to a part of the Greek population.

He has represented that, for several centuries, France has exercised in favor of the Catholics subject to the sultan a special patronage, which his most Christian majesty thinks he ought now to deposit in the hands of the future sovereign of Greece, so far as concerns the provinces which are to comprise the new States; but in resigning this prerogative, his most Christian majesty owes it to himself, and to a population which

has so long lived under the protection of his ancestors, to demand, that the Catholics of the continent, and the islands, shall find, in the organization to be given to Greece, guaranties sufficient to compensate for the action which France has hitherto exercised in their favor.

The plenipotentiaries of Great Britain and Russia have appreciated the justice of this demand, and it has been agreed that the Catholic religion shall enjoy in the new State, the free and public exercise of its worship; that its property shall be secured to it; that the bishops shall be maintained in the integrity of the functions, rights and privileges, which they have enjoyed under the patronage of the king of France; and, in fine, that, according to the same principle, the estates belonging to the old French missions, or establishments shall be recognized and respected.

The plenipotentiaries of the three allied courts, desiring further to give to Greece a new proof of the benevolent solicitude of their sovereigns in regard to her, and to preserve that country from the evils which the rivalry of sects (or religions, cultes) professed there, might produce, have agreed that all the subjects of the new State, whatever may be their religion, (culte,) shall be eligible to all public offices, functions and honors, and treated on the footing of an entire equality, without regard to difference of belief, in all their relations, religious, civil or political.

ABERDEEN.

MONTMORENCY LANE.

LIEVEN.

B.

Extract from Protocol, No. 33, of the conference held at the Foreign Office, on the 1st of July, 1830.

2d. The privileges granted to the Catholics by protocol, No. 3, of the 3d of February, 1830, cannot "impose on the Greek government any obligation, which would turn to the prejudice of the dominant church." If the maxims of tolerance which dictated that protocol are applicable to all sects in general, if they offer to them all, without distinction, complete security in the bosom of Greece, the plenipotentiaries think they ought nevertheless to declare that, on the other hand, the intentions, and the solicitude of the three courts, expressed in that protocol, with respect to the equality of civil and political rights, refer specially to Christian sects.

C.

Translation of articles 17 and 18, of the statute "concerning reviling in general, and the press," being the law now in force, under which Dr. King was convicted.

Article 17. (196 of Penal Code, of 1833.)—Imprisonment, for a term not exceeding three months, and, upon a second conviction, for a term not exceeding six months, is inflicted upon him, who, in public discourse, by writing, or by symbolical representations, attacks, by

contemptuous mockery, or malevolent expressions, the dogmas, the ordinances and the customs of the oriental church, or other religion existing with the consent of the government.

Article 18. (152 of Penal Code, of 1833.)—Whoever, by public discourse, teaching, writing, or symbolical representation, expresses himself to the scandal of others, in a manner derogatory to the reverence due to the Creator of the universe; whoever expresses such principles, opinions, or sentiments as are repugnant in general to the grounds of religion and morals, or are otherwise injurious to religion, or to morality; whoever attempts to justify acts characterized as offences, or crimes, by the law, is condemned to imprisonment for a term not exceeding three months, and, upon a second conviction, is punished with an imprisonment not exceeding six months.

Articles from the French code, of which the above cited article 17 was borrowed.—Loi du 17 Mai, 1819.

ARTICLE 1. Quiconque soit par des discours, des cris ou menaces proférés dans des lieux ou réunions publics, soit par des écrits, des imprimis, des dessins, des gravures, des peintures ou emblèmes vendus ou distribués mis en vente ou exposé dans des lieux ou réunions public, soit par des placards et affiches exposés aux regards du public, aura, etc., etc.

Loi du 25 Mars, 1822.—Quiconque par l'un des moyens énoncés en l'article premier de la loi du 17 Mai, 1819, aura outragé ou tourné en dérision la religion de l'Etat, sera puni d'un emprisonnement de trois mois à cinq ans et d'une amende de trois cents francs à six mille francs.

Les mêmes peines seront prononcées contre quiconque aura outragé ou tourné en dérision toute autre religion dont l'établissement est légalement reconnu en France.

Original German of articles 196 and 152 of the penal code of 1833, corresponding to articles 17 and 18 of the present statute against reviling, &c.

ARTIKEL 196, (17 of the present law.) Gefängniss-Strafe bis zu 3 beim Rückfalle aber bis zu 6 Monaten, trifft denjenigen, welcher in öffentlicher Rede, oder in einer Schrift, die Lehren, Einrichtungen und Gebräuche einer mit Genehmigung der Staats-Regierung bestehenden Religions-Gesellschaft durch Ausdrücke der Verachtung, des Spottes, oder des Hasses angreift.

ARTIKEL 152, (18 of the present law.) Wer durch öffentliche Rede, Lehre, Schrift oder bildliche Darstellung solche Grundsätze, Meinungen oder Gesinnungen ausspricht welche wider die Grundlagen der Religion- und Sittenlehre überhaupt gerichtet, oder sonst für Religion oder Sitten von gemeinverderblicher Beschaffenheit sind; wer sich öffentlich zum Aergernisse anderer auf eine die Ehrfurcht gegen das höchste Wesen beleidigende Weise äussert ist mit Gefängniss bis zu 3 beim Rückfalle aber bis zu 6 Monaten zu bestrafen.

D.

Substance of the complaint of the Synod of Greece, and motion of the Attorney General thereon, before the Court of Correctional Police, that a true bill be found against Dr. King.

The holy synod of the kingdom of Greece being informed that the American missionary, Jonas King, here resident, having returned from Europe, (where he had taken refuge, flying from this place on account of the heterodox teaching and proselytism he had practised, and of the criminal prosecution which he was consequently about to undergo, by virtue of the law,) has again begun to persevere in teaching publicly, in his house, dogmas, principles, and opinions altogether repugnant to the grounds of our holy religion, and which fatally assail the mysteries, the rites, and the customs of the orthodox oriental church of Christ, has, in due form, complained against him, and prayed his prosecution and punishment, for that his behavior here in Athens is become scandalous, and so forth.

The complaint aforesaid, and divers other written papers from the holy synod, the ministry of religion and instruction, and the administrative police of Athens and the Piraeus, all touching the said heterodox teaching of the aforesaid American missionary, Jonas King, coming to the knowledge of the attorney general, it was ordered that a regular inquest be had, from the result whereof it appears :

That the said Jonas King, an American missionary, being here at Athens, does continue, from the year past, hitherto, to teach, in his own private house, publicly, and in the hearing of all such as come thither, and to discourse concerning religious opinions, uttering, to the scandal of hearers, opinions, principles, and sentiments repugnant to the grounds of our holy religion, and of the orthodox oriental church of Christ, and having a pernicious influence thereon, inveighing against the orthodox Greeks, for that they worship the Deity in an erroneous manner, and mocking and blaspheming the dogmas of our immaculate faith, and the traditions and the customs, and whatsoever is honorable and revered in our orthodox church, as that of transubstantiation, and so forth, wrongly expounding the divine and holy scriptures, and reviling its mysteries and its rites, that of divine baptism, and others ; and particularly he characterizes as idolatry the worship (or adoration) of our most holy mother of God and ever-virgin Mary, and of the saints, regarding the first as not ever-virgin and mother of God, and the others as mere men. In like manner he calls the holy fathers of the church heretics and idolaters, and does not receive the sacred councils, and the things ordained by them in matters of religion, and delivered by tradition to the later orthodox Christians ; and by reason of this, his heterodox teachings, he is become a scandal in Athens, provoking a riot in his house, on a certain day, at the hour of his teaching.

But, as to proselytism effected by the same, there appeared indeed, from the inquest, to be some proofs of it ; but they were not sufficient, for the present, to establish a charge against him.

The accused being interrogated, and defending himself, did not deny the teaching he practises, but affirmed that he teaches rightly whatever he thinks and believes as such.

But, inasmuch as the punishable act of heterodox preaching, now under consideration, committed by the said accused, Jonas King, is provided against, and made punishable, by the 17th and 18th articles of the law concerning reviling, and so forth, therefore, we move that this council do decree, that there exists sufficient cause for accusation against him, and that it do send him to the bar of the court of correctional police in this city, to be adjudged guilty, for that, within his house, here situated, during the past and current year, he hath taught every Lord's day, and at divers hours, expounding forsooth the holy and divine scriptures, and sundry other divine passages, wrongly interpreting the same, and uttering opinions, principles, and sentiments repugnant in general to the grounds of our holy religion, and exercising a pernicious influence thereon, and upon the orthodox oriental church of Christ, its mysteries, rites, and customs, contrary to the 17th and 18th articles of the law concerning reviling, and so forth; but do cease, for the present, any further proceedings against him on the charge of proselytism.

E.

Record of the proceedings of the Council of Correctional Police, upon the motion D, and upon the hearing on the inquest.

Having heard the attorney general in support of the motion aforesaid, and the said attorney having withdrawn, and this council having perused all the documents touching the process, and having deliberated according to law, and whereas, from the reasons set forth in the motion of the attorney general, which this judicial council finds to be fully supported by the results of the inquest in that behalf had, and by the law, there do appear good and sufficient proofs against the accused, Jonas King, as guilty of heterodox teaching; and considering the 251st article, §4 and 2* of the code of criminal procedure, this council doth allow the above recited motion of the attorney general, and sends to the bar of the court of correctional police the American, Jonas King, to be adjudged guilty; for that, during the past and current year, (by) preaching in his house, here situated, publicly, in the exposition of the holy scriptures:

1st. That baptism is nothing other than a simple symbol, and, consequently, it is indifferent whether one be sprinkled or immersed.

2d. That they that eat a little bread, and drink a little wine, are foolish in thinking that they shall be saved by this communion.

3d. That the most holy Mother of God is not ever-virgin.

4th. That they who worship her, as also the other divine images, are idolators.

5th. That he does not receive the sacred councils, and the things ordained by them in matters of religion, and delivered by tradition to the later orthodox Christians.

*This article relates merely to the form of procedure.

6th. That the fathers and the saints of the orthodox oriental church of Christ were deceivers, and thereby brought in diverse heresies.

7th. That holy baptism is no other than an external sign for Christians.

8th. That those who observe lent are foolish.

9th. That many deceivers have come into the world, who have brought in many diverse heresies among men, saying, if a man sin, it is good that he give alms to the poor, that God may forgive the sin, and that he pray to certain men, whom they call saints, that they may intercede with God for the forgiveness of sins, and so forth.

He did assail in public discourse, by contemptuous mockery, and malevolent expressions, the dogmas, the ordinances and the customs of the oriental church, and uttered opinions and sentiments repugnant in general, to its fundamental principles, (grounds, bases,) and having a pernicious influence, contrary to the 17th and 18th articles of the law concerning reviling, which provides as follows :

Article 17. Imprisonment for a term not exceeding three months, and, upon a second conviction, not exceeding six months, is inflicted upon him who in public discourse, in writing, or by symbolical representations, assails, by contemptuous mockery or malevolent expressions, the dogmas, the ordinances, and the customs of the oriental church, or any other religion existing with the consent of the government.

Article 18. Whoever by public discourse, teaching, writing, or symbolical representation, expresses himself, to the scandal of others, in a manner derogatory to the reverence due to the Creator of the universe ; whoever utters such principles, opinions, or sentiments as contravene in general the grounds of religion and morals, or are otherwise pernicious to religion and morality ; whoever attempts to justify acts characterized by law as offences or crimes, is condemned to imprisonment for a term not exceeding three months, and upon a second conviction, not exceeding six months. And this council doth surcease, for the present, further inquest or proceedings against him on the charge of proselytism.

F.

Evidence before the Council of Inquest of the Court of Correctional Police.

I.—TESTIMONY OF DEMETRIUS DEMARES.

At Athens, this 31st of March, 1851, Saturday, in the office of inquest, before me, the examining judge, Cons. Œconimides, the under clerk, Ar. Liberopoulus, being also present, the undermentioned witness having appeared, is examined as follows :

Question. What is your name, etc. ?

Answer. Demetrius Demares ; I was born at Sitena of Cynowria ; I live here ; am twenty years of age ; a student of the university of the medical school.

Question. Do you know King ?

Answer. I know him, simply. (He gave the promise by touching the hand of the examining judge.)

Question. Do you frequent on Sunday the house of the accused, and how had you occasion to do so?

Answer. Six months ago I lived in the same house with a certain student, Kalopothakeo. This person, on Sunday, proposed to me to go to the house of an American, who expounds the gospel very correctly. Although I knew that the American, King, had been formerly exiled from Greece, for heterodox teaching, because he blasphemed against our holy religion, I had some curiosity, and went to be satisfied from my own observation, of the character of his teaching; hence I began to go frequently, on Sundays, from that time, and until a short time since.

Question. What then did you observe in his teachings?

Answer. During all that period of his teaching, I heard him always inveighing against the sacred images, saying that we should not reverence them, because after his death his fellow-citizens or the Greeks might rank even him with Basil and Chrysostom; against the fathers, maintaining that the expositions which they gave of the scriptures are not correct, and that God alone can interpret them. He himself, notwithstanding, gave expositions, which he thought correct, and on this account, taught them to men; in attacking the holy councils, he said that they were organized by the emperors of these times, not for a religious end but with a view to their political interests, and that the emperors made use of the confessing priests, in order to learn the spirit and the object of the people. Finally, once in private, when I asked him what were his opinions of the mother of God, he told me (both he and his wife) that we ought not to call her mother of God, and that she did not remain a virgin, because she bare other children also, as he argued from the gospel according to Mark, chap. 6th, 1st verse. He attacked likewise fasting, (saying) that we ought not to fast, because that which we do is but a change of food, and not fasting; and, speaking of the holy communion, he said that the wine and bread are not changed in substance, as we think into the blood and body of Jesus Christ, and for this reason, a man may, under all circumstances commune freely. Speaking concerning baptism, he said that we wrongly believe that, by baptism, the sins of men are washed away; and, in general, in his teaching, he perverts the doctrines of our religion.

Question. Does he confine himself simply to this kind of teaching, or does he endeavor to teach perseveringly his own doctrines?

Answer. I think that his object is no other than that of proselytism; otherwise, why this regularity of teaching, on appointed days and hours, in his private house, to persons having no connection or acquaintance with him? Why the private instructions and teachings on every Thursday, to those most devoted to him, who are John Pæonides, D. Sakellarius, J. Patakes, Michael Kalopothakes, from eight until ten o'clock, p. m.? In respect to this last circumstance, Stanrianus Kentapues, a student of the first class of the school, can inform you. To me, myself, he said once, when he saw that I frequented his teachings very regularly, and paid attention to them, and showed devotion, that he would recompense me, since, as he observed, I received his words; and he incited me to communicate his doctrines to others also. He told me, moreover, that he recompensed also John Pæonides, and D.

Sakellarius, concerning whom there exists an idea that they are paid by him, and by a certain matriculated student of the university, called Syntichus. I have been informed that John Gongouses, a student of the first class of the gymnasium, is hired.

Question. Do you know anything else relative to the matter in question?

Answer. I know that the said Pæonides, Sakellarius, and Michael Kalopothakes, not only endeavor to persuade (persons) to frequent the teachings of King, but also in the private room of Pæonides, collect together other students, and expound to them the gospel according to King's manner of exposition. At their instigation, I went myself to their teachings, and heard them teach the same doctrine, contrary to religion, as I have mentioned to you above, that King also teaches.

Concerning this, let Stanrianos Kentoupes, George Demarks, and Eleutherius Thomopoulus, a student of the medical school, be examined.

Read and signed.

The examining judge,

The examined,

K. J. ŒCONOMIDES.
DEMETRIUS DEMAKES.
AR. LIBEROPULUS,
Under Clerk.

II.—TESTIMONY OF GEORGE GLINES.

At Athens, this 24th March, 1851, Saturday, at the office of inquest, before me, the examining judge, C. Œconomides, the under clerk, Ar. Liberpoulus, being also present, the undermentioned witness, having appeared, is examined as follows:

Question. What is your name, etc.?

Answer. George Glines; I was born at Nauplia; I live here; am 20 years of age; a workman at the polytechnic school here, and a Christian.

Question. Do you know King?

Answer. I know him barely. [He gave the promise by touching the hand of the examining judge.]

Question. The 11th of March, the present month, about noon, did you go to the habitation of King, in this place, and with how many others?

Answer. Yes; I went alone.

Question. How did you chance to go to his house?

Answer. I had long since heard, from different persons, and especially from Leonidas Kyriakoules, a printer in the royal printing office, that King regularly taught, on Sunday, in his house, where there came together many hearers, unfolding the gospel and the holy scriptures, and that, in his teaching, he expressed himself against our holy religion. Wishing therefore to assure myself of the truth of the reports, I also began to frequent his house, and my visit thither of the 11th of March was the eighth.

Question. Were the hearers always regular?

Answer. Until the carnival there appeared twenty to thirty hearers,

among them were five or six distinguished as regular, but during lent the number of hearers increased to one hundred and thirty, among whom were always the five or six constant ones, and about ten others who appeared rather regularly at the meetings.

Question. What are the names of these regular hearers?

Answer. The names of all I am not acquainted with; I know only that among them one is named Katachanas, a hatter; another Paeonides, a student of the university. I do not know the name of any other. By sight, however, I may know others also. Moreover, I know that one other was named Babastaurakes, living opposite Katachanas, who, too, told me that he was present with Katachanas, also at a private teaching.

Question. Did all those who assembled there participate in the principles of King, or did they assemble for curiosity's sake?

Answer. Only the ten or twelve regular ones, of whom I have made mention to you, shared the principles of his teachings, asserting that they did not meet in his teachings anything offensive, inasmuch as, in his discourses, he relies upon the scriptures. Paeonides, moreover, as I learned from Kyriakoules, who learned this from Tzaxeres, a student of the gymnasium, teaches in his house, like King, the servant of Tzaxeres, and certain others; and he prays like King, that is to say, without making the sign of the cross, and has his own forms of prayer, and not those received by our religion.

Question. In the meetings at which you were present, did you hear King teaching doctrines contrary to religion, or other teaching repugnant to our holy traditions, and to the holy canons of our orthodox eastern religion?

Answer. Two or three————— ago, I heard once the teaching of King, but then he said nothing of importance against our holy religion, perhaps because my visit to his house chanced to be when he had been anathematized, and it appears he had restrained himself. In the meetings this year, however, he inveighed unreservedly, and without the slightest precaution, against the holy images, the holy councils, the celibacy of bishops and monks, and the separation of the monks from the world, and the mother of God. In his discourse next preceding the last, he touched also lightly upon transubstantiation, and against the images and the cross; he said that they ought not to be worshipped; against the councils, in three lessons, that their acts have no force and no validity; against the celibacy of the bishops and monks, and their separating themselves from the world, he said that it is in opposition to the text, "increase and multiply;" against transubstantiation, that it does not present, as we understand it, the body and blood of Jesus Christ; and various other things, of which I took notes, but which, it seems, I have lost. (The witness here searched in his pocket-book, but did not find them.) Likewise he opposed fasting, saying that we ought not to fast, arguing from the passage, "not that which entereth in, but that which cometh out."

Question. This discourse, (showing him the manuscript,) is it of your composition?

Answer. Yes, but in the copy it has been corrupted by errors of the pen.

Question. Have you then heard all that you have mentioned in it from King?

Answer. Yes; I have heard him teaching that, and, with the intention of addressing some questions to him, in order to show the falsity [of his arguments,] I drew up this memoir, so to say, and went to his house on that day, to the meeting; but it seems that before me, Alexander Theagenes, a student of the theological school, had the same object.

He anticipated me, and addressed certain questions to King relative to his teachings, wherefore I was silent, waiting by Theagenes, in order to help him, if he should need assistance. King undertook to reply, only asking whether the question was concerning the teaching of that day, (which had nothing reprehensible,) otherwise it would be well to talk privately on another day. Theagenes assented to this, and decently commenced the discussion of one example, which, on that day, King had advanced, calling himself, with much particularity, Abel, as telling the truth, but us, Cain, because we wished on that account to injure him. Thence he proceeded, also, to the teaching of the preceding meetings, when his wife interposed, (coming on purpose among us from the other room, as, until that moment, she had not been present,) and prevented Theagenes from proceeding in his questions. On this account, the hearers began to insist that he should talk that day. But King pretended that he wished to talk, but that his wife would not allow him; whence there arose a small disturbance, and we dispersed.

Question. After this circumstance, do you know whether King continued his Sunday teachings?

Answer. Yes, he continued, but I did not go any more.

Question. Besides the persons whom you have mentioned to us, who else can give us other information whether the accused, besides his public teachings, made use of persuasive ways for proselytism, and whether, for this purpose, he paid or had hired persons?

Answer. Demakes, I think, a student of the university, knows also those proselytes, as he feigned, if I am not deceived, proselytism. Demedes Emmanuel, a student of the first class of the gymnasium; Epaminondas Skarboles, student of the same class, and Pantocles Tzibzibakas, student of the same class.

Read and signed.

The examining judge,

The examined,

K. J. ŒCONOMIDES,
GEORGE GLINES,
AR. LIBERPOULUS,

Under Clerk.

III.—TESTIMONY OF JOHN PAEONIDES.

At Athens, this 25th of April, 1851, Wednesday, p. m., before me, K. J. Œconimedes, examining judge of the court of correctional police, and the clerk of the court, appeared N. Broskes, the undermentioned witness, and was examined as follows:

Question. What is your name, &c.?

Answer. John Paeonides. I was born at Bosina, of Macedonia. I live here, am a matriculated student of the medical school, 28 years old, and a Christian.

Question. Do you know Jonas King, and have you any relationship to him?

Answer. I barely know him. (He gave the promise by touching the hand of the examining judge.)

Question. Do you frequent the house of King?

Answer. Yes, since 1848, if my memory does not deceive me.

Question. Generally on what days, and at what hours?

Answer. From what had happened, in respect to him in 1846 and 1847, I think I felt a curiosity to know him in August, and to hear his teaching, wherefore I go on Sundays about 11 o'clock, and after dinner at 5 o'clock. I do not, however, attend regularly every Sunday, but at intervals.

Question. What did you observe of his teaching during those visits?

Answer. I observed that several persons assembled in one room, the same always, where King, standing, takes as a theme a part of the Scriptures, or of the Gospel, and interprets it in the presence of the hearers. This takes place before dinner. After dinner, that is about 5 o'clock, fewer persons come together in the same or in another room, where all listen, sitting, to King reading an entire chapter of the Old Testament, and after that he offers a prayer.

Question. Have you ever heard him, in that teaching of his, speak against the grounds of our holy religion, or against the canons and the traditions of our orthodox synods?

Answer. Speaking generally, and not particularly, about the eastern church, he says that every church, whether in the east or in the west, not founded upon the holy Scriptures alone, is mistaken.

Question. Did he ever speak particularly concerning the Mother of God, concerning the saints, concerning the images, concerning the celibacy of bishops and the separation of monks from the world, concerning transubstantiation and lents? And what is his belief concerning them?

Answer. Concerning the virgin, he believes that she bore Christ, and according to the flesh, as man, but not according to essence; arguing that Christ, in respect to his humanity, was without father, but in respect to his humanity, (divinity,) without mother; and that afterwards she lived with Joseph as a woman. He does not approve of the worship paid to her; this I heard in a discourse after dinner. Likewise he does not approve of the honors ascribed to the images. As to what concerns the saints, he believes them to be in heaven, but does not approve of our considering them also as intercessors with Christ. That the not marrying of bishops and the separation of the monks from the world, not only he has not found in any portion of the Scriptures, but they are in opposition to certain epistles of Paul to Timothy and Titus; and that transubstantiation is nothing but simply a type, in remembrance of the Lord's Supper, and in remembrance of his death, and not his body and blood. Concerning lents, he says that they are nothing but a change of food; but fasting, as he understands

it, should take place, not on fixed days, but according to the different circumstances in which Christians are situated.

Question. Do you know whether he attempted to make proselytes to these doctrines of his?

Answer. I do not know either that he has any such, or that he exerts himself particularly for that object. Nay, we entered into conversation with him respecting the object of his teaching, and he told me that his aim was no other than to distribute the Word of God, to promote the reading of the Scriptures, and to leave each one to judge the Word according to his own ideas.

Question. Do you know whether he assists, in a pecuniary way, any one of his hearers?

Answer. No; on the contrary, I know that certain persons sought pecuniary assistance of him, and failed. But I do not remember their names.

Question. In your house, are you accustomed to receive friends, to whom you hold religious discourse?

Answer. Since 1847, I am accustomed, every Saturday, in the evening, to read parts of the Old and New Testaments, and that custom I contracted, because, as early as 1835, I began to practise these exercises occasionally, while I was yet in my own country, my father being a priest. If, then, friends chance to come to my room, I enter into these religious exercises. Of the appointed persons who come, however, some come accidentally, and others with a view to the said exercises.

For the certifying of the above, the present was drawn up, which, having been read, was signed by us all.

The examining judge,

The examined,

K. J. ŒCONOMIDES.

PAEONIDES.

N. BROSKES,

Clerk of the Court.

IV.—TESTIMONY OF L. KYRIAKOULES.

At Athens, this 30th of March, 1851, Friday, in the office of inquest, before me, the examining judge, K. Œconomides, the under clerk, Ar. Liberopoulus, being also present, the undermentioned witness having appeared, is examined as follows:

Question. What is your name, &c.?

Answer. Leonidas Kyriakoules. I was born at Tripolis. I live here, am 26 years old, a printer, and a Christian.

Question. Do you know King?

Answer. I barely know him. (He gave the promise by touching the hand of the examining judge.)

Question. Do you frequent this person's teaching?

Answer. From the 1st of October until the 3d of December, O. S., I frequented it regularly; thenceforth I ceased going at all.

Question. For what cause did you cease attending?

Answer. I knew, from hearsay, that the accused had formerly been driven away from Athens on account of heterodox teaching, and I had

the idea that he was still absent. One Sunday I was passing by his house, with a friend of mine, who asked me whether we should go in to hear King. I asked him whether he had returned, and he told me that he had returned, and was teaching, and added, "See, his hearers are dispersing;" and, in fact, I saw that a few persons were coming out from his house. The following Sunday, therefore, I went for curiosity's sake, because, as I propose to devote myself to ecclesiastical matters, when I finish my work I study the sacred Scriptures, so I continued to attend regularly on Sunday, and I have notes of each of his lessons; and when on my last visit I wished to ask an explanation, and to oppose him in his heterodox teaching, he sent me away without giving me even an answer to my questions, so therefore I ceased from going any more.

Question. Can you specify to us those parts of his teaching which are in opposition to the grounds of our holy religion, and to the traditions of the holy synods and of the fathers?

Answer. Yes. I told you that I always made notes of what he used to teach on Sunday, and in order to save time I hand you the 1,129th number of the newspaper, "The Age," for January 17th of the present year, in which is inserted a petition of mine of December 8, 1850, to the holy synod, in which I detail, *in extenso*, generally what relates to the teaching of King, which also I affirm.

In corroboration of those statements of mine, I hand you another number of "The Age," 1,130, of January 20, in which appears a confirmation of my statements, signed by D. Tziaxeres. Afterwards others of his hearers, students of the gymnasium, having heard likewise, at a subsequent period, the teachings of the accused, repugnant to religion, petitioned also the holy synod, by their memorial of February 11, 1851, exhibiting in it exactly all they had heard. That petition I subscribed also, as well as John Kalomoeres, so far as relates to the accounts contained in it of King's school, concerning which, perhaps, there is at this time no question pending.

Question. Can you inform us whether the accused simply teaches, or whether he also endeavors, and in what manner, to proselytize his hearers to his doctrine?

Answer. Demetrius Demakes told me, that since he frequented very regularly the meetings of King, and showed in some sort attachment, (to him,) King expressed frequently his thanks, and praised him, telling him he was a good young man, because he listened with devotion to his teaching, and besought him to communicate it to others also, saying that he would recompense him, as he had also recompensed John Paeonides, John Patakes, Demetrius Sakellarius, and Michael Kalopothakes. They are particularly his proselytes.

Question. Do you know anything else capable of enlightening us in respect to the subject before us?

Answer. I know nothing else, since, as I told you, I have for a long time ceased going.

Read, and signed, &c.

V.—TESTIMONY OF J. RESTIMOPOULUS.

At Athens, this 2d of June, 1851, Saturday, p. m., before us, the examining judge of the court of correctional police, at this place, K. J. Œconomides, and the clerk of the court, N. Broskes, appears the under mentioned witness, who is examined as follows :

Question. What is your name, etc.?

Answer. John Restamopoulos, I was born at Kalabryta; I live here, am twenty-four years old, a printer, and a Christian.

Question. Do you know Jonas King?

Answer. I barely know him. (He gave the promise by touching the hand.)

Question. Do you frequent his house? On what days and at what hours?

Answer. Not now; I only went in October, on two Sundays, when I was still a military musician.

Question. What was the occasion of your going?

Answer. At the instigation of a friend of mine, a printer, called Leonidas Kyriakoules.

Question. On what account did he incite you to go?

Answer. From curiosity, in order that we might satisfy ourselves whether his teaching was indeed perverse.

Question. Well, what did you hear?

Answer. On the first Sunday he had as his theme holy baptism. So he said that man, even if he washed in the rivers, cannot be purified from his sins. Consequently, according to his ideas, which all Europe has received, sprinkling is more correct than baptism, (immersion,) or that if it be wanting altogether it is indifferent. As, for example, he stated, that as it is indifferent whether a general has a small or a large standard, so likewise it is indifferent whether a person be baptized (immersed) or sprinkled. The second Sunday I do not remember what theme he had; I remember, however, that afterwards, one day I went to the house, and requested him to give me a New Testament, printed at Cambridge, according to the seventy, (septuagint,) but he first asked me to bring him a recommendatory letter from the teacher Constantinides. I answered him that I was not a scholar, and did not even know him. Again he added that those books are not inspired, and in confirmation of this assertion, he cited Saint Athanasius, who mentions which are canonical, and asked me whether I wished him to give me some of his own, which were good. At the same time he asked me whether I went to his teaching. I told him that I did. In this interval a third person came and interrupted us, and I left.

Question. Do you know whether King has, or endeavors to make, proselytes, and whether, for this purpose, he pays money?

Answer. From hearsay alone I know that he has, as proselytes, the sons of Geson, (or of the old man,) and that he has, also, other secret ones whom he pays. From my own observation, however, I do not know.

For the certifying whereof, the present was drawn up and signed by us all, &c.

VI.—TESTIMONY OF EM. DEMIDES.

At Athens, this 26th of March, 1851, Monday, in the office of inquest, before me, the examining judge, K. Œconomides, the under clerk, Ar. Liberopoulus being also present, the under mentioned witness appears, and is examined, as follows:

Question. What is your name, etc.?

Answer. Emanuel Demides; I was born at Nauplia; I live here, am nineteen years of age, a student of the gymnasium, and a Christian.

Question. Do you know King?

Answer. I know him barely. (He gave the promise by touching the hand.)

Question. Are you accustomed to frequent his house?

Answer. Some time since, reading in "The Age" a petition of Leonidas Kyriakoules, in which he made mention of the teaching of King, I had my curiosity awakened, and on this account went myself, also, six or seven Sundays, and heard his preaching during the present year.

Question. Concerning what, particularly, was his teaching?

Answer. This man usually takes passages from the Gospel, or from the apostles, expounding which with great hypocrisy, or, in a declamatory way; he perverts their true meaning, and taking opportunity, attacks the holy canons and traditions of our religion. For instance, according to his notion, no one is worthy of worship but God. He attacked the saints, and the mother of God, and her virginity, and the intercession of the saints. He cited as an authority a passage from Epiphanius, in which he says, "let no one worship Mary." On another occasion, taking as a foundation the passage, "increase and multiply," he attacked the celibacy of bishops, and the separation of the monks from the world, calling them rebels, (deserters or apostates,) from the Gospel. In another teaching, taking as his subject the epistle of Paul, I think, in which, addressing the Athenians, he said that he saw them to be very superstitious; he attacked the holy images, insisting that the said passage means this also, that is, he considers the Athenians superstitious, as having many objects of worship. He spoke against facts, (saying,) namely: that we ought not to fast; but I do not remember whereon he founded that opinion of his. In like manner he attacked also several others of our ecclesiastical traditions; endeavoring, however, always to conceal his aim, and assigning as his principal object the enlightening of erring nations.

Question. Do you know whether the accused endeavored to make proselytes to his doctrine?

Answer. As I have heard from my friends Demakes and Leonidas Kyriakoules, that the accused, besides his open preaching, on Sunday, teaches also, in the evening, some who are considered as proselytes, and who, in the meeting of the day, appear more attentive and devoted, and, as Demakes says, it appears also for this purpose that the accused hires [them].

Question. Who are those he has named as proselytes?

Answer. He named to me a certain Paeonides, who, as I heard, imitating his teacher, teaches himself, also, privately, at his house, Kalopothakes, and Katachanas, and George Staurakes.

Question. Do you know of anything else capable of enlightening us, in discovering whether the accused makes proselytes to his heterodox teaching?

Answer. At present I do not remember any other circumstances.
Read and signed, &c.

VII.—TESTIMONY OF D. SAKELLARIUS.

At Athens, this third day of May, 1851, Thursday, p. m., before us, the examining judge of the court of correctional police, K. I. Œconomides, and the clerk of the court, N. Broskes, the undermentioned witness appeared, and was examined as follows:

Question. What is your name, &c.?

Answer. Demetrius Sakellarius. I was born in Samannae, of Macedonia; I live here, am a printer, 32 years old, and a Christian.

Question. Do you know Jonas King, and have you any relationship to him?

Answer. I barely know him.

[He gave the promise by touching the hand.]

Question. Do you frequent the house of Jonas King?

Answer. As often as I have time. I go on Sunday at eleven o'clock.

Question. How long have you been going, and with what object?

Answer. I became acquainted with this man four years ago, when I worked in the printing establishment of Antoniades. I printed a book for him, and, on account of the correction of the proofs I had occasion to go to his house. In the meanwhile, however, I was absent a considerable time in my own country. I continued going, however, because afterwards I was informed that on Sunday, at the said house, he preached the Gospel; and as I received pleasure from that preaching of his, I continued to go.

Question. Did he himself ask you to go?

Answer. When I went the first Sunday, I asked him if one might go freely to listen, and he told me that he did not hinder, but received whoever happened to come.

Question. In that preaching of his did he ever discourse about the Mother of God, about the saints, about the images, about the councils, about the celibacy of bishops, about transubstantiation, and about lentils, [or fasts?]

Answer. He never took these subjects as the theme of his preaching; often, however, in speaking from the pulpit he spoke upon them also. And concerning the Mother of God, he said that we ought not to call her Mother of God, because in no part of Scripture is this epithet used, but mother of Jesus Christ. Concerning the saints, he said that we do not offer worship to them, which we owe to God alone; likewise, that we should not worship [or adore] images, which is particularly forbidden by the second commandment. Speaking concerning councils, he sometimes said that the first council strengthened christianity considerably, but afterwards they strayed, in order to oblige the emperor and to enrich themselves. Speaking about bishops and

monks, he said that the celibacy of the first and the retirement of the latter are not prescribed by the Scriptures, but are particularly opposed to christianity. He maintained the opinion that they should be married and in the midst of the world, and not separate from it. And finally, speaking about transubstantiation, he does not believe that the bread and wine are changed into the body and blood of Christ, but that Jesus Christ gave this command in simple remembrance of his sufferings.

Question. From what you have told us above, it seems that the accused teaches many things not agreeing with the grounds and the holy canons of the orthodox eastern church; how then did you say above, that having found pleasure in his teaching, (whilst he attacks things pertaining to our religion,) you continued to go?

Answer. I continued for two reasons: First, because I saw that his preaching was Christian and moral, and I confess that I was benefitted in this respect; and second, because I took occasion to study the Scriptures myself also.

Question. Did you go thither only at eleven o'clock, or also about evening?

Answer. In the afternoon, for one year only. I have gone sometimes for the sake of society, on which occasion there takes place, also, religious conversations.

Question. Do you know whether he attempts to make proselytes to his doctrines?

Answer. I know nothing of the kind; what he preaches he says publicly.

Question. Do you know whether he spends money with the object of proselyting?

Answer. No, I do not know; on the contrary, I have heard from himself formerly that various poor persons sought assistance from him, but that he told them that he was unable to give them material aid, and could give moral assistance only.

For the certifying of the above facts, the present was drawn up, which, having been read, was signed by us all, &c.

G.

Dr. King's appeal from the finding of the bill by the Council of the Court of Correctional Police.

Whereas, the council of the court of correctional police at Athens, grounding its proceedings on the seventeenth and eighteenth articles of the law (in the penal code) relating to reviling in general, and to the press, has, by its bill numbered four hundred and one, sent me to the bar of that court, to be tried on the charge of "teaching publicly, in my own house, dogmas, principles, and sentiments wholly repugnant to the grounds (or fundamental principles) of the holy religion of the Greeks, and which fatally assail the mysteries, the rites, and the customs of the oriental church;

Whereas, according to the express declaration of article tenth of the

Greek constitution, "any one may publish his thoughts orally, and in writing, and by the press, provided he observe the laws of the realm ;

Whereas, the first article of the constitution, on the one hand, forbids proselytism, concerning which no accusation is pending against me, whilst on the other it permits the free exercise of every known religion ;

Whereas, as a citizen of the United States, I profess a religion well known as prevailing, particularly in New England, and held by no inconsiderable portion of the people of Great Britain ;

Whereas, in exercising my religion in my own house, and explaining the word of God in truth, I commit no act contemplated in the seventeenth and eighteenth articles of the law on reviling, inasmuch as the seventeenth article imposes a penalty on him who, with intention to revile, attacks the oriental church, or any other religion ; but no such intention can be imputed to him who teaches the principles and tenets of his religion, or interprets the word of God and the sacred scriptures, even though such interpretation be discordant with that received by the oriental church ;

Whereas, the indictment would forbid the teaching of any other religion in Greece except that of the oriental church, and would require universal conformity to the dogmas, the ordinances, and customs of the oriental church ;

Whereas, this follows from the fact that I am accused only of attacking the Greek religion, and not religion in general, and the whole accusation, consequently, turns upon this, that I am not a member of the Greek church, and do not believe in accordance therewith ;

Whereas, therefore, while the constitution allows the free exercise of every other known religion, the seventeenth article (of the penal code) only prohibits attacks upon the oriental church made publicly, and simply with an intention to revile, but does not prohibit those who believe differently from the oriental church to teach things at variance with the dogmas, the ordinances, and customs of that church ;

Whereas, the eighteenth article (of the penal code) is wholly inapplicable to the case, inasmuch as the indictment sets forth nothing in support of the charge that I teach things derogatory to the reverence due to the Supreme Being, or that I express sentiments, opinions, or views opposed, in general, to religion or good morals ;

Whereas, I view it to be the greatest injustice to prosecute a citizen of a friendly nation, for the sole reason that he preaches the word of God in his own house—to which the United States of America owe all the blessings that they enjoy, and especially their internal tranquility ;

Wherefore, for the reasons aforesaid, and others expressed at my examination, I pray the quashing of the indictment numbered four hundred and one, which the council of the court of correctional police at Athens presented in the city of Athens the 21st of August, 1851, and promulgated the 23d of the same month and year ; and I appeal to the justice of the council of the court of appeals in Athens to quash the aforesaid indictment, and to declare that there exists no ground of accusation against me for the act for which I am sent down for trial.

JONAS KING,

Citizen of the United States of America.

ATHENS, August 27, (September 8,) 1851.

H.

Record of the proceedings before the Council of the Court of Appeals.

[No. 2,485.]

The council of the judges of the court of appeals, division first, consisting of the judges Ar. Moraitines, president, John Sakkallaropoulos, N. Saidopoulos, John L. Messenazes, and P. Kieppes; there being present, both the assistant attorney general, G. Prantounes, and the clerk, K. Georgiades.

Having assembled in the consulting chamber, the 7th of September, 1851, in order upon advisement, to decide upon the following matter, the council of the court of correctional police, of Athens, by its bill of indictment No. 401, of August 23d of this year, sent to their bar, Jonas King, an American, to be adjudged guilty; for that during the past and current years, preaching in his house here, publicly, in the exposition of the holy scriptures, that baptism is nothing else but a simple symbol, and consequently it is indifferent whether a person is sprinkled or baptized, [immersed;] that those who eat a little bread, and drink a little wine, are foolish in thinking that they will be saved by this communion; that the all-holy Mother of God is not even virgin; that those who worship her, as well as the other images, are idolaters; that he does not receive the holy councils and the things ordained by them, in matters of religion, and delivered by tradition to later orthodox Christians; that the fathers and saints of the orthodox eastern church of Christ were deceivers, and thereby brought in divers heresies; that holy baptism is nothing but an external sign for Christians; that those who observe lents are foolish; that there have entered in many deceivers into the world, who have introduced many divers heresies among men, saying that if man sins it is good that he give alms to the poor, that God may pardon the sin, and that he should supplicate also certain men, whom they call saints, to intercede with God, to pardon him if he sins, etc. He did attack, in public discourse, by contemptuous mockery, and malevolent expressions, the doctrines, the ordinances and the customs of the eastern church, and expressed opinions and sentiments contrary in general to its fundamental principles, and having an injurious influence; contrary to articles 17 and 18 of the law concerning reviling and the press.

From the finding of this indictment, the accused having appeared, within the legal term, by his appeal of the 27th of last month, praying this council, for the causes therein set forth, to quash the indictment appealed from, and that he be discharged from prosecution, this council adjudging that there exists no cause of accusation against him: Wherefore, the assistant attorney general, having submitted to the council of this court the matter in question, moved, by his motion, numbered 24,646, that the said Jonas King's appeal from the finding of said bill of indictment be rejected, and that said finding remain of force, *because*, although article 10 of the constitution permits every one to publish orally, and in writing, as well as by the press, his thoughts, yet, likewise, the same constitution binds every one who wishes to

publish his opinions to observe the laws of the State. But, in the case in question, the accused, contrary to articles 17 and 18 of the law concerning reviling, in his house in this place, expounding publicly the sacred scriptures, during the past and the present year, hath attacked by contemptuous mockery, and malevolent expressions, the doctrines, the ordinances and the customs of the eastern church, and, at the same time, expressed such principles, opinions, and sentiments, as are repugnant in general to the grounds of the eastern religion, and are injurious to the same.

Having heard the same attorney also, in support of his said motion, and he having withdrawn from the council—having perused the record, and having deliberated according to law—whereas, by the 10th article of the constitution, every one may publish orally, and in writing, and by the press, his thoughts, but upon condition of observing the laws of the State, which have for their object the quiet and security of the citizen, and (according to article 1 of the constitution) of not encroaching upon the prevailing religion :

Consequently the attacking of the prevailing religion, by public teaching and contemptuous mockery of its doctrines and customs, is not permitted, and so likewise the expression of principles in opposition to the grounds of the prevailing religion : Whereas, in the present case, according to the actual facts established by the inquest, the accused proposing to himself as an object, to persuade the followers of the prevailing religion who attend his teachings that they are lying in error, did publicly, in public discourse, contemptuously mock its doctrines, ordinances and customs, expressing principles repugnant to the grounds of religion, for this purpose, inviting to his house a public assembly ; consequently he has* violated articles 17 and 18 of the penal code, which he ought to observe, living, as he does, in the Greek community ; for these causes, and the reasons set forth in the finding of the bill of indictment appealed from, and in the motion of the assistant attorney general, rejects the appeal of said Jonas King, from the finding of said indictment, numbered 401, of the council of the judges of the court of correctional police of Athens.

Adjudged and done at Athens, this tenth of September, 1851, and published the twelfth of the same month and year.

The president :

A. MORAITINES.
JOHN SAKELLARPOULUS.
N. D. SAIDOPOULUS.
J. L. MASSINAZES.
P. J. KIEIPPES.
K. GEORGIADES, *Clerk.*

I.

Appeal to the Arcopagus from the judgment of the Council of the Court of Appeals.

Whereas, the council of the court of appeals in Athens, by its judgment, numbered 2,485, and dated 12th September, of the current year,

affirmed the finding of the bill of indictment, numbered 401, of the council of the court of correctional police, which sends me to be tried before said court, under the 17th and 18th articles of the law concerning reviling in general and concerning the press, on the charge of "*teaching publicly, in my own house, dogmas, principles and opinions wholly repugnant to the grounds of the holy religion of the Greeks, and which fatally assail the mysteries, the rites, and customs of the oriental church.*"

Whereas, the first article of the constitution, on the one hand, forbids proselytism, concerning which no accusation has been preferred against me, whilst, on the other, it permits the *free* exercise of every other *known* religion;

Whereas, as a citizen of the United States of America, I profess a religion, well known as prevailing, particularly in New England, and as held by no inconsiderable portion of the people of Great Britain;

Whereas, by publicly exercising my religion on the Sabbath, in my own house, and expounding the Word of God in truth, I do not violate the 17th and 18th articles of the law concerning reviling in general, and concerning the press; inasmuch as the 17th article imposes the penalty upon him who, with the intent to revile, and for no other purpose, attacks the Greek church, or any other religion; and no such intention can be imputed to one who teaches, at the hour of public worship, the principles and tenets of his religion, or in accordance therewith interprets the Word of God, or the sacred scriptures, even though such interpretation be at variance with that received by the oriental church;

Whereas, to teach a religion, known in Greece, at hours of worship, and in places set apart for that purpose, (e., g., in my own house,) although it differs from the prevailing religion, does not constitute an encroachment thereon, for the reason that, otherwise, every other known religion would be debarred the right to inculcate its peculiar doctrines in time of worship, and so, instead of the *unrestricted* exercise of every known religion, as guarantied by the constitution, that religion alone would be allowed the liberty of *public worship* which agrees with the dogmas, opinions and customs of the oriental church;

Whereas, if article 17, touching reviling, bore such meaning, it ceased to have such force, after the adoption of the constitution, by virtue of the 1st and 103d, articles thereof;

Whereas, the 18th article (of the penal code) is wholly inapplicable, inasmuch as I am not accused of uttering anything derogatory to the reverence due to the Supreme Being, or of expressing sentiments, opinions or views at variance with religion in general, or with good morals;

Whereas, for those reasons, it appears that the law has been falsely construed, and erroneously applied, I pray the reversal of the judgment of the court of appeals, numbered 2,485.

JONAS KING,

Citizen of the United States of America.

ATHENS, October 4th, (16th,) (N. S.,) 1851.

J.

Proceedings before the Areopagus, on the appeal from the decision of the Council of the Court of Appeals.

[PENAL JUDGMENT, No. 117.]

The court of areopagus, consisting of judges G. A. Ralli, president; A. Polyzoidi, vice-president; B. Kurunopulo, P. Speliádi, A. Brélgari, P. Paparregópulo, and B. T. Economidi; present, the attorney general, John A. Somáki, and the clerk, G. Kodopulo; convened in public session on the 13th December, 1851, to hear *the petition for reversal* of Jonas King, American missionary resident at Athens, appellant, who appears by his lawful counsel, Spiridion Pellica and Spiridion Triantaphylli, advocates, against the judgment of the council of ephétae (court of appeals) at Athens.

The council of plemmeliodicae, (court of correctional police,) at Athens, by its judgment, No. 401, of 23d August of the present year, affirmed also by the above-named judgment of the council of ephétae, in Athens, sent down the said Jonas King to the bar of the same plemmeliodicae, to be adjudged guilty for that, during the past and the present year, by preaching publicly in his house here, in expounding the holy scriptures, that baptism is nothing but a mere symbol, and, consequently, it is indifferent whether a person be sprinkled or baptized, (immersed;) that they who eat a little bread and drink a little wine are foolish in thinking that they will be saved by this distribution; that the most holy Mother of God is not ever-virgin; that those who worship her, and likewise the other divine images, are idolaters; that he does not receive the sacred synods, nor the decrees in regard to religion enacted by them, and handed down to the orthodox Christians after them; that the fathers and saints of the orthodox eastern church of Christ were deceivers, and, in consequence, brought in divers heresies; that holy baptism is nothing but an external sign for Christians; that they who keep the fasts are foolish; that many deceivers have come into the world, who have brought in many and divers heresies among men, saying, if a man sin it is good to give alms to the poor, that God may forgive the sin, and to beseech certain men, whom they call saints, to intercede with God, that their sins may be forgiven, &c.

He hath assailed, in public discourse, by contemptuous mockery and malevolent expressions, the doctrines, the ordinances, and the customs of the eastern church, and has expressed sentiments and opinions repugnant in general to the foundation of said church, and having an injurious influence—contrary, to wit, to the statute in regard to reviling and to the press, articles seventeen and eighteen.

The accused Jonas King prayed a reversal of this judgment before the council of ephétae, at Athens, moving said council, for reasons set forth in his appellatory motion of the 27th August of the present year, that the judgment be reversed, that he be discharged from prosecution, and that said council declare that there did not exist against him any cause of accusation.

The said council of ephétae, before whom the said appellatory motion

was called by the attorney general, *having reference* to the causes set forth in the judgment appealed from, and in the reply of the attorney general, rejected the prayer of said Jonas King, against the judgment No. 401 of the present year of the said council of plemmeliódicae, and affirmed that judgment *in toto*.

Of this judgment of said council of eppétae said Jonas King prays the reversal, for the following reasons :

1st. Because said last mentioned judgment erroneously affirmed the judgment of the council of plemmeliódicae, by which the appellant was sent down to be tried under articles 17 and 18 of the law in regard to reviling in general and to the press, for teaching publicly in his house doctrines, principles, and sentiments altogether contrary to the sacred religion of the Greeks, and *attacking fatally* the sacraments, rights, and customs of the eastern church.

2d. Because, according to the first article of our constitution, proselytism, indeed, is forbidden, (concerning which no charge is pending against him,) but the worship of every other known religion is allowed without restraint.

3d. Because, being a citizen of the United States of America, he professes a religion well known and, indeed, prevalent in New England, and professed by no contemptible portion of Great Britain.

4th. Because, in performing publicly the rites of his religion in his house on Lord's days, and interpreting truly the word of God, he does not violate the articles referred to—17 and 18 of said law.

5th. Because, according to the 17th article, punishment is inflicted on any one who, with a design to revile, and, from no other motive, attacks, the eastern or any other religion ; but such a design cannot be attributed to him who teaches at the house of worship the principles and the fundamental doctrines of his religion, or interprets the word of God—that is, the holy scriptures—according to that religion, albeit this, his interpretation, may disagree with the interpretation of the eastern church.

6th. Because the teaching of a religion known in Greece, at the hour of worship, in the place appointed for that purpose, (that is, in his own house,) albeit it does not agree with the prevailing religion, does not, therefore, constitute an interference with that religion—since otherwise we should deprive the worship of every known religion of the teaching of its own doctrines ; and so, instead of the worship of every known religion being without restraint, according to the constitution, the worship of every known religion would be allowed only in so far as it might agree with the doctrines, opinions, and customs, of the Greek church.

7th. Because, if the 17th article of the law concerning reviling did contain such a sense, nevertheless, after the constitution, by virtue of articles 1 and 10, it ceased to have that sense.

8th. Because the 18th article of the same law is in nowise applicable, inasmuch as he is not accused of assailing the reverence due to the Creator of the universe, nor of expressing principles, opinions, and sentiments, which are repugnant, in general, to religion and to morality ; and because, consequently, it is a case of false construction and misapplication of the law.

Having heard the statement of the reporting judge, A. Bulgari, the counsel for the appellant, and the attorney general, having deliberated according to law; whereas, the first article of the constitution declares the eastern orthodox religion to be dominant in Greece, and only enjoins the toleration of other known religions, at the same time forbidding every interference with the religion of the kingdom; and the 10th article of the same constitution sanctions indeed the liberty of speech, but upon condition that the laws of the kingdom be observed; consequently, although the constitution tolerates the worship of foreign religions, it does not, however, allow the condemnation of the principles, customs, doctrines, and ordinances, of the religion dominant in Greece; and the council of ephétae, in Athens, in the case before the court, considering *in the exercise of its sovereign authority*, the actual facts certified against Jonas King on the inquest, the estimation of which *does not belong to the jurisdiction of the areopagus*, allows, upon a second consideration of the judgment appealed from, both for the reasons mentioned in the judgment of the plemmeliodicae, and also for those proposed by the king's attorney, which it likewise admits, that Jonas King did, publicly, by public teaching, contemptuously mock the doctrines, the ordinances, and the customs of the eastern orthodox church, expressing principles contrary to its *fundamental doctrines*, inviting for this purpose a public assembly, in his house, inveighing against the orthodox Greeks, as worshipping the divinity after a wrong manner, mocking and blaspheming the doctrines of the national faith and the traditions, reviling the sacraments and the rites, calling the worship of the most holy mother of God, and of the saints, idolatry, and the holy fathers of the Greek church heretics and idolaters; that is to say, the epheteion certifies the commission of an act expressly forbidden by the constitution, and punishable according to the 17th article of the law concerning reviling in general, and concerning the press, which law it has rightly applied; but the introduction of article 18th of the same law into the judgment is erroneous, inasmuch as it appears, from the letter and the meaning of the recitatory part of said judgment, that the criminal act attributed to the appellant consists, in general, in this—that he has publicly, in public teaching, by contemptuous mockery, revilings, and malevolent expressions, attacked the foundations, the doctrines, the ordinances, the principles, and the customs, of the national religion of the kingdom; in other words, is an act provided against, as aforesaid, expressly and particularly, by the 17th article, which was also applied; therefore, no act contemplated by article 18th being certified by the judgment, the council ought not to have applied that article, and consequently, the judgment, in this respect, must be reversed; therefore,

This court reverses the judgment, No. 2,485, of September 10th, 1851, of the council of ephétae, in Athens, in so far as by it, the 18th article of the law concerning reviling in general, and concerning the press, was applied, and denies the prayer of Jonas King, for reversal of the same judgment, in so far as regards the application of article 17th.

It orders to be returned to Jonas King the security deposited by him, and puts the fees for stamped paper to the account of the public.

Adjudged, decided, and published at Athens, 20th December, 1851.

The President:

G. A. RALLI.

A. POLYZOIDI.

B. KURUNOPULO.

P. SPELIADI.

A. BULGAU.

P. PAPANEGOPULO.

B. T. ECONOMIDI.

G. KODOPULO, *Clerk.*

An accurate copy. Athens, 2d January, 1851, (2.)

G. B. KEORUTOPELLO,

Assistant Clerk.

K.

*Record of the proceedings on the trial before the court of correctional police.
Sitting of the twenty-second of February (5th of March, N. S.) of the
court of correctional police of Athens.*

Judges.—Basil Nicolopoulos, president; Constantine Pappaspyrides, Nicolas Kallisperes, John Boniseres, and Constantine Economedes; John Typaldus, attorney general; R. Matakides, clerk.

Accused.—Jonas King, present in person with his counsel, Spiridion Tryantaphylles and Spiridion Pellecas, advocates.

Offence.—Reviling.

At the above public session, in the court room of the judicial department, was brought up the abovenamed accused, who, having been questioned by the president concerning his identity, replied that he was named Jonas King, was born in Hawley, in America, lives in Athens, 59 years old, temporarily acts as consul of the United States, and is evangelical in religion.

After this the president told him that he was charged with a criminal offence, and asked him whether he had counsel for his defence. The respondent answered that he had as his counsel the lawyers present, Spiridion Tryantaphylles and Spiridion Pellecas, whom the president reminded of the regulations of article 376 of the code of criminal procedure. He charged the respondent to attend to the accusation against him and the discussion concerning it.

Hereupon the attorney general, addressing [the court,] stated briefly the contents of the bill found agreeably to the citation, and placed in the hands of the president a list of the witnesses summoned by the prosecution. 1. Demetrius Demakes; 2. George Glines; 3. John Paconides; 4. Leonidas Kyriakoules; 5. John Restamopoulos; 6. Emmanuel Demides; 7. Demetrius Sakellarius; 8. Alex. Lycurgus; 9. George Melidouer; 10. Demetrius Tokehteres; 11. Panteles Pozitzibakus; 12. Alexander P. Theagenes; and 13. Emmanuel Artiers, whose names were called by the crier, and who were found present, with the exception of the last four. The counsel for the respondent also, in like manner, handed to the president a list of the witnesses for the defence.

1. George Paraschus; 2. Demosthenes Palabanas; 3. Anask. Kitza-kes; 4. Michael Kalopothakes; 5. Emmanuel Joamides; 6. And. Patousas; 7. John Pappabasilopoulus; 8. Const. Patakes; 9. Dem. Brotzanus; 10. Napoléontus Seronius; 11. Mark Melaïtes; 12. Stam. Prikaliotes; 13. Ulysses Kynegus; 14. Mark Trankogenakes; 15. Peter Ratzelus; 16. G. Labeates; 17. Taktakes; and 18. Tatzelus Maromates, whose names were called by the crier, and who were found present with the exception of the last six.

The attorney general, addressing [the court] in respect to the witnesses for the prosecution who had not appeared, said that he waived their testimony and moved that the present trial proceed upon the testimony of the witnesses present, inasmuch as the witnesses D. Tzachteres, P. Tzitzibakes, and Alex. Theagenes were not found, so that their summons could be delivered to them. But Emm. Artius, although legally subpoenaed, as is certified by the return of the summons, had contumeliously neglected to appear, wherefore he moved the court to impose upon the said Artius a fine of twenty drachmas and the duty on the stamp.

The counsel for the respondent, addressing, [the court,] said that they took no exception to the motion in general of the attorney general, and that they waived the evidence of witnesses for the defence who had not appeared, to which waiver the attorney general did not object. The court having consulted, in their seats, in due form, announced, through the president, their decision publicly, by which the motion of the attorney general concerning the imposition of a fine upon the non-appearing witness for the prosecution was denied, because he was not regularly summoned, and the duty on the stamp was imposed upon the public.

And now, by order of the president, the witnesses, both for the prosecution and for the defence, were ordered to withdraw from the court room into separate apartments, and there remained for examination. One of the witnesses for the prosecution who, being questioned by the president in respect to his personal identity, answered that he is named (1st) Demetrius Demakes, born in Kynouria, lives here, is twenty years of age, a student of the university, and an orthodox Christian; that he barely knows the accused, and has neither relationship nor enmity to him.

Having been sworn on the holy Gospel, according to the 121st article of the code of criminal procedure, and having been examined with regard to the accusation under consideration, he deposed the same things as on the inquest.

After his examination, he remaining in the court room, there came another witness for the prosecution, who, being questioned in respect to his personal identity, answered that he is named (2d) George Glines, born at Nauplia, lives here, is 20 years of age, an artizan, and an orthodox Christian; that he barely knows the accused, and has no relationship nor enmity to him.

Having been sworn on the holy Gospel, according to article 121 of the code of crim. proc., and examined as the one before him, he deposed as on the inquest.

After his examination, he remaining in the court room, there came another witness for the prosecution, who, having been questioned in

respect to his personal identity, answered that he is named (3d) John Paeonidés, born in Macedonia, lives here, is 28 years old, a student, and a Christian; and that he barely knows the accused.

Having been sworn on the holy Gospel, according to article 121 of the code of crim. proced., and having been examined like those who preceded him, he deposed as on the inquest.

After his examination, he remaining in the court room, there came another witness for the prosecution, who, having been questioned in respect to his personal identity, answered that he is named (4th) Leonidas Kyriakoules, was born at Tripolis, lives here, is 27 years old, a printer, and an orthodox Christian; and that he barely knows the accused.

Having been sworn upon the holy Gospel, according to article 121 of the code of criminal procedure, and having been examined as those who preceded him, he deposed the same things as on the inquest.

After his examination, he remaining in the court-room, there came another witness for the prosecution, who, having been questioned in regard to his personal identity, answered that he is named (5th) John Restamopoulus, born at Calabryta, lives here, is a printer, twenty-seven years old, and an orthodox Christian; that he simply knows the accused.

Having been sworn on the holy Gospel, according to article 121 of the code of criminal procedure, and examined as those who preceded him, he deposed the same things as on the inquest. After his examination, he remaining in the court-room, there came another witness, who, having been questioned in regard to his identity, answered that he is called Emmanuel Demides, born at Nauplia, lives at Athens, is a student, twenty-two years old, and an orthodox Christian; simply knows the accused; and, having been sworn on the holy Gospel, according to the 121st article of the code of criminal procedure, and examined as those who preceded him, he deposed the same things as on the inquest.

After his examination, he remaining in the court-room, there came another witness, who, having been questioned in relation to his personal identity, answered that he is named (7th) Demetrius Sakellarius, born in Macedonia, lives here, is a printer, thirty-two years of age, and an orthodox Christian; that he simply knows the accused. Having been sworn upon the holy Gospel, according to article 121 of the criminal procedure, and examined as those who preceded him, he deposed the same things as on the inquest.

After his examination, he remaining in the court-room, there came another witness for the prosecution, who, being questioned in regard to his personal identity, answered that he is named (8th) Alexander Lycurgus, born in Samos, lives at Athens, is twenty-five years old, a student of the university, and an orthodox Christian; that he simply knows the accused. Having been sworn upon the holy Gospel, according to article 121 of the code of criminal procedure, and examined as those who preceded him, he deposed, that formerly he was a friend of the accused, and had intercourse with him, and knows that the accused is opposed to our religion, and from that time ceased his intercourse with him. But he had heard from many other persons that the accused, teaching, forsooth, the word of God at his house, whither many hearers

freely come, uttered blasphemy against the mother of God, saying that she ought not to be so called, but mother of Christ. Moreover, against baptism, that it is not a mystery, and consequently it is no matter whether a person be baptised or not. That he misrepresents the celibacy of the clergy and the worship of the images of the saints. And I have heard that all these things he taught publicly in the years 1849 and 1851, in his house, where he invited students, his friends and acquaintances, to listen, with the object of making them proselytes, and that finally by this teaching of his the accused attacked and directly refuted our religion.

After his examination, he remaining in the court-room, there came the last witness for the prosecution, who, having been questioned in regard to his identity, answered that he is named (9th) George Melidones, was born in Crete, lives here, is sixty-seven years old, an empiric physician, and an orthodox Christian; that he simply knows the accused. Having been sworn on the holy Gospel, according to the article 121 of the code of criminal procedure, and examined as those who preceded him, he deposed that he was formerly intimate with the accused, who asked him to become a missionary, that is, to change his religion, (the eastern,) and become an evangelist. From that time he ceased his intercourse with the accused, and for five years had not gone to his house.

After his examination, he remaining in the court-room, commenced the examination of the witnesses for the defence, and, by order of the president, there came one of them, who, being questioned in regard to his name, &c., answered that he is named (1st) George Paraschus, born in Scio, lives here, is twenty-eight years of age, an employé, and an orthodox Christian. He knows merely the accused. Having been sworn on the holy Gospel, according to the article 121 of the code of criminal procedure, and examined upon the points suggested by the counsel for the respondent, he deposed that last year at intervals he was present at the discourses of the accused, which took place at his house publicly; that he grounded himself in his discourses upon the Old and New Testaments, as far as he (the witness) was able to learn, and he believes that the accused is of a creed contrary to the eastern (Greek) religion; that, however, he never heard mockery of our religion. His teachings are free to any who choose to come.

After his examination, he remaining in the court-room, there came another witness, who, being questioned in regard to his personal identity, answered that he is named (2d) Demosthenes Palapanos, born at Carytana, lives here, is twenty-seven years old, a student of the medical school, and an orthodox Christian. Having been sworn on the holy Gospel, according to article 121 of the code of criminal procedure, and examined as those who preceded him, he deposed that two or three Sundays he heard the teaching of the accused, who had as his basis the scriptures. Mockery against our religion, however, he had not heard from the accused while teaching.

After his examination, he remaining in the court-room, there came another witness, who, having been questioned in respect to his personal identity, answered that he is named (3d) Anastasius Kitzakes, born at Pribozon, lives at Athens, 29 years old, a corporal of the infantry,

and an orthodox Christian; that he simply knows the accused. Having been sworn on the holy Gospel, according to article 121 of the code of criminal procedure, and examined as those who preceded him, he testified, that he went twice or thrice to the lessons of the accused, and did not hear him attack our religion. After his examination, he remaining in the court-room, there came another witness, who, having been questioned in respect to his identity, etc., answered that he is named (4th) Michael Kalopothakes, was born at Areiopolis, lives here, is 26 years of age, a student, and an orthodox Christian; that he simply knows the accused. Having been sworn on the holy Gospel, according to article 121 of the code of criminal procedure, and having been examined as those who preceded him, he testified, that he twice heard the accused teaching the gospel, as he (the accused) believes. He did not, however, hear him revile our religion, but based his teaching on the Old Testament.

After his examination, he remaining in the court-room, there came another witness, who, being questioned in respect to his name, etc., answered that he is named (5th) Emanuel Joannides, was born in Amurgus, lives here, is 28 years of age, a teacher, and an orthodox Christian.

Having been sworn on the holy Gospel, according to article 121 of the code of criminal procedure, and examined as those who preceded him, he testified, that four times he had heard the teaching of the accused, and never heard him utter mockery against our religion.

After his examination, he remaining in the court-room, there came another witness, who, being questioned in respect to his name, etc., answered that he is named (6th) Andrew Patounas, was born at Ipsara, lives here, is 40 years of age, a teacher of French, and an orthodox Christian; that he knows the accused simply. Having been sworn upon the holy gospel, according to article 121 of the code of criminal procedure, and examined as those who preceded him, he testified, that four or five times he heard the teaching of the accused, and did not, in them, hear mockery against our religion.

After his examination, he remaining in the court-room, there came another witness, who, having been questioned in respect to his name, etc., answered that he is named (7th) John Pappabasilopoulus, was born in Epirus, lives here, is 22 years old, a student, and an orthodox Christian; that he simply knows the accused; and, having been sworn on the holy gospel, according to article 121 of the code of criminal procedure, and examined as those who preceded him, he testified, that he twice heard the accused teaching, and had not heard anything opposed to our religion. After his examination, he remaining in the court-room, there came another witness, who, having been questioned in regard to his name, etc., answered that he is named (8th) Const. Pakakes, was born at Bolus, in Thessaly, lives here, is 27 years of age, a student of the medical school, and an orthodox Christian, who simply knows the accused. Having been sworn on the holy Gospel, according to article 121 of the code of criminal procedure, and examined as those who preceded him, he testified, that he had heard the teaching of the accused, five or six times. But in private, he heard from him, that

we ought not to trust in the images of the saints, because this is in opposition to the Old Testament.

After his examination, he remaining in the court-room, there came another witness, who, having been questioned in respect to his name, etc., answered that he is named (9) John Mark Melaïtes, was born at Ipsara, lives at Chalcis, 66 years of age, an officer in the navy, and an orthodox Christian, that he simply knows the accused. Having been sworn on the holy Gospel, according to article 121 of the code of criminal procedure, and examined like those who preceded him, he testified that he heard, one Sunday, the accused teaching the Gospel in his house, and did not hear mockery of our religion.

After his examination, he remaining in the court-room, there came another witness, who having been questioned concerning his personal identity, answered that he is named (10) Demosthenes Bratzanos, was born in Ipsara, lives here, is twenty-six years old, secretary of the Duchess of Plaisance, and an orthodox Christian, that the accused he simply knows.

Having been sworn on the holy Gospel, according to article 121 of the code of criminal procedure, and examined as those who preceded him, he testified that he had heard the teaching of the accused a few times, and did not hear any mockery of our religion. After his examination, this witness also remained in the court-room.

After the examination of all the above witnesses, both for the prosecution and for the defence, the president asked the accused and his counsel whether they had anything to observe or to suggest against the testimony; but he answered in the negative.

And now the counsel for the respondent waived the remaining evidence for the defence, to which waiver the attorney general took no exception, and hereupon the president asked the respondent whether he had anything to say; and the said respondent insisted, in his defence, that the charge of reviling the eastern religion whereof he was accused, is false, and is an intrigue of his friends [enemies?]

The discussion of the evidence being concluded, the attorney general proceeded to set forth the grounds of the prosecution, praying that the respondent be adjudged guilty, in manner and form as charged in the bill of indictment, under articles 17 and 18 of the law "concerning reviling in general, and concerning the press." The counsel for the respondent set forth the grounds of the defence, and prayed the acquittal of said respondent.

The attorney general, being heard in reply to the counsel for the defence, insisted on the guilt of the respondent. The counsel for the respondent, to whom leave of speaking was granted, said that they had nothing to add.

The respondent, to whom leave to speak was granted, spoke in his own defence and prayed to be acquitted; and thereupon the president declared the argument closed, and withdrew with the other justices, and the clerk, into the consulting room, for advisement upon the judgment; and shortly thereafter he came forth, and with the remaining judges, and the clerk, took his seat in court, where in the presence of the attorney general, and the respondent, with his counsel, Spyridon Tryantaphyllis, he publicly pronounced the judgment of the court by

which the said Jonas King was adjudged guilty of having, in the years 1850 and 1851, in public discourse and teaching here, attacked by malevolent expressions the doctrines, the ordinances, and the customs of the eastern orthodox church, and expressed principles, opinions, and sentiments, repugnant in general to the grounds of religion, and injurious thereunto. Upon the publication of this judgment, the attorney general addressing [the court,] moved that the convict be condemned to the shortest term of punishment [imprisonment,] and to the costs of trial, and the duty on the stamps [the payment whereof to be enforced] by committal, and that his expulsion beyond the bounds of the Hellenic State, as an alien, be ordered, by virtue of articles 34 and 37 of the penal code.

The counsel for the convict, to whom leave of speaking was granted, as to the punishment, did not oppose the motion, but as to the motion for the expulsion of his client beyond the bounds [of the State,] he resisted the same and prayed that it be denied, for that the provisions of article 34 of the penal code are not hereunto applicable. The respondent, to whom leave to speak was granted, said nothing, and the court having deliberated according to law, pronounced through the president publicly, in the presence of the attorney general, of the clerk, and of the respondent, with his counsel, sentence, whereby the said Jonas King was condemned to imprisonment for fifteen days, and to the costs of the trial, and the duty on stamps [to be collected] by personal committal. His expulsion beyond the bounds of the Greek realm was also ordered, and hereupon the President dissolved the court.

The President,

B. K. NICOLOPOULUS.
CONST. PAPPASPRIDES.
N. KALLISPERES.
JO. BONISERES.
CONST. ŒCONOMIDES.
A. MATAKIDES, *Clerk.*

L.

Judgment and sentence of the Court of Correctional Police.—No. 704.

The court of correctional police of Athens, consisting of the president, B. K. Nicolopoulos; the judges, Const. Pappaspyrides, Nicol. Kallisperes, John Boniseres, and Const. T. Œconomides; the attorney general, Jo. Typaldos, being present, and the secretary, Ar. Matakides; being publicly assembled in the court room of the court, the 22d of February, (5th March, N.S.,) 1852, for the trial of Jonas King, charged with reviling, who appeared, having also his advocates, Spyridon Tryantaphylles, and Spyridon Pellicas, here present:

The council of this court, by its order, No. 401, of the 23d of August, 1851, sent to the bar of this court the said respondent, to be tried for that, preaching, in the year 1850 and 1851, within his house, in this place, publicly, in the exposition of the sacred scriptures, that baptism

is no other than a simple symbol, and consequently it is indifferent whether one is sprinkled or immersed; that those who eat a little bread, and drink a little wine, are foolish in thinking that they will be saved by this communion; that the most holy Mother of God is not ever-virgin; that those who worship her, as also the other divine images, are idolaters; that he does not accept the sacred councils, and the things ordained by them in religion, and handed down by tradition to the orthodox Christians in later times; that the fathers and the saints of the orthodox oriental church of Christ were deceivers, and, as a consequence of this, they brought in divers heresies; that holy baptism is no other than an external sign for Christians; that they who keep lent are foolish; that many deceivers have come into the world, and have brought in many and divers heresies among men, saying, if a man sin, it is well to give alms to the poor, that God may forgive the sin, and to pray to certain men, whom they call saints, that they may act as mediators with God that his sins may be forgiven, &c.; in public discourse, by contemptuous mockery and malevolent expressions, he did attack the dogmas, the ordinances, and the customs of the oriental church, and expressed opinions and sentiments contrary, in general, to its base, and having an injurious influence, that is, in violation of the articles 17 and 18 of the law concerning reviling, etc.

From this order the respondent took his appeal, upon which was issued, the 10th September, 1851, No. 2,485, the decision of the council of the court of appeals, in this place, by which his appeal was rejected, the order from which he appealed affirmed, and the articles 17 and 18 of the law concerning reviling, &c., were applied.

And of this decision the same respondent prayed reversal, and thereupon the areopagus pronounced judgment, the 20th December, 1851, No. 117, reversing the said decision, No. 2,485, of the court of appeals, in so far as concerned the application of article 18, and rejecting his prayer for the reversal of the same decision in so far as regarded the application of article 17.

In pursuance whereof, the attorney general, at this court, by a citatory order, summoned the said respondent to appear this day at the bar of this court for trial, according to the law. Having examined the respondent concerning his identity; having heard the attorney general set forth the intent and purpose of the criminal charge; having examined the witnesses, under oath, first, for the prosecution, Demetrius Demakes, George Glines, John Paeonides, Leonidas Kyriakoules, John Restamapoules, Emmanuel Demides, Demetrius Sakellarius, Alexander Lycurgus, George Melidon; second, for the defence, George Parasches, Demosthenes Palapanes, Anastasius Kitchakes, Michael Kalopothakes, Emmanuel Joannides, Andrew Patounas, John Papabasilopoulus, Constantine Patakes, John Marki Melætes, and Demosthenes Bratchanos. Having heard the respondent in his own defence, the attorney general, who set forth and maintained the grounds of accusation, and moved that the accused be adjudged guilty, according to the citatory order, that is to say, of a violation of articles 17 and 18 of the law concerning reviling, &c., and the counsel for the respondent, who set forth the grounds of the defence, and prayed the acquittal of their client; the attorney general having replied, and insisted upon the guilt of the re-

spondent; the respondent having spoken in his own defence, and prayed his acquittal; having perused all the documents relative to the process; having deliberated according to law:

Whereas, from the sworn depositions of the witnesses for the prosecution at the bar, the confession of the respondent, and the whole proceedings, the following facts appeared; that, particularly in the years 1850 and 1851, the accused, regularly every Sunday, and at a specified appointed hour, namely, at 11 a. m., received publicly into his house every one who came, and in their hearing, taking as a theme a passage of the holy Gospel for that day, expounded the same; but that, in his public teaching, called by him preaching, he did not confine himself to the exposition of his text, according to his religion; but going, of set purpose, beyond his proper sphere, did malevolently revile our holy canons, and the traditions of the eastern church, not admitting as mysteries baptism and transubstantiation, and, touching baptism, that it is indifferent whether it be by immersion or by sprinkling, (which he considers as more correct,) because the baptized is not purified by it from sins, and that those who think the contrary are foolish; that the communion is only bread and wine, and cannot be any other than a simple type for remembrance; that the Mother of God is the mother of Christ, and simply a woman, and did not remain a virgin after the birth, [of Christ,] but bare also other children, and that we ought not to worship her; that the worship of the holy images is idolatry, as also that we ought not to worship the saints, because they are simply men, and that neither they, nor the Mother of God, can mediate for us with God, and that those who profess this are foolish; that the fasts, and the celibacy of the monks and prelates are contrary to the divine commands; and that, with the exception of the first council, the others were the invention of the emperors, for political purposes, and for this reason their acts are of no authority; that in this teaching, as has already been set forth, always on the same day and hour, he had no other hearers but the children of the orthodox eastern church, and did not confine himself, in his preaching, to the exposition of the Gospel, according to his opinions, but, of set purpose, arrayed himself against the dogmas and canons of the eastern orthodox church, attacking them; that as from his preaching arose scandal among his hearers, and, on certain Sundays, some one of his hearers undertook to refute him, but he was not willing to enter into the contest, and in order to compel them to go away, he hoisted, in his house, the American flag; that, besides the teaching on the Lord's day, at 11 o'clock, he received also, in the evening, every Sunday, at a specified hour, some of his chosen ones, to whom he spoke concerning religion; and finally, that, not seeing for some Sundays the witness G. Meledon, he sent to him to know why he did not continue to come to hear him, and invited him to go, and also he invited to this another witness for the defence, and in general he was pleased when he saw many hearers.

Whereas, from the things briefly set forth, and their connection with one another, it is sufficiently evident, and the court is persuaded, that the respondent, Jonas King, in the years 1850 and 1851, in this place, in public discourses and teachings, attacked, by malevolent expressions, the dogmas, and the ordinances, and the customs of the eastern

church, and expressed such principles, and opinions, and sentiments as are contrary in general to the bases of religion, and are injurious to religion and morals; and the calling of the Mother of God simply a woman, and affirming that she bare also other children; and that the communion, that is, the body and blood of our Lord Jesus Christ, is bread and wine, are incontestably malevolent expressions, and principles, opinions, and sentiments contrary to religion are the whole of his teachings, as is above set forth, and this has a prejudicial influence upon religion and morals; and whereas, what was deposed by some of the witnesses for the defence, that they had heard nothing contrary [to the Greek religion] as often as he spoke publicly, cannot disprove specific and distinct statements of the witnesses for the prosecution; and inasmuch as the witnesses for the defence deposed that one was present once, and another twice, or four times, at his teaching, and consequently, it is possible that the respondent said nothing then against the eastern religion, or that they did not hear this; and as to the argument of the council for the respondent, to the effect that article 18 cannot be applied, because the areopagus, by its decision, reversed the judgment of the court of appeals in that behalf, [it is answered,] that said decision of the court of areopagus is without force, and that decision, considered as a definitive judgment, doth not bind this court, for that the said reversal was decreed, because the areopagus did not find, in the opinion pronounced by the council of the court of appeals, facts coming within the purview of said article 18, but such facts did [afterwards] appear at the bar of this court, and consequently this court can take notice of the same, and weigh them, and adjudge thereon, inasmuch as thereby the character of the criminal charge, upon which the respondent was sent down for trial, is not at all changed;

Therefore, adjudges Jonas King, born in Hawley, in America, residing in Athens, aged 59, evangelical, guilty of having attacked, in the years 1850 and 1851, in this place, in public discourse and teaching, by malevolent expressions, the dogmas, the ordinances, and the customs of the eastern orthodox church, and of expressing principles, opinions, and sentiments which are contrary in general to the bases of religion, and are prejudicial thereto.

Adjudged, decided, and published at Athens, the 22d February, 1852.

The President,

B. K. NICOLOPOULAS,
CONST. PAPASPARIDES,
N. KALLISPERES,
J. BONISERES,
K. J. ŒCONOMIDES,
A. MATAKIDES, *Clerk.*

After the publication of this judgment, having heard the attorney general moving that the convict be sentenced to the least degree of punishment, to the costs of trial, the duty on the stamps, &c., and that order be taken for his expulsion, as an alien, beyond the bounds of the Greek commonwealth;

The counsel for the respondent convicted not excepting to said motion as it regards the penalty, but resisting the same as far as regards

the exile of his client, and praying that said motion be so far denied, having in view the documents relative to the proceedings, having deliberated, according to law ;

Whereas, the act whereof the respondent, Jonas King, stands convicted, is provided against and made punishable by articles 17 and 18 of the law concerning reviling in general, and concerning the press, which prescribes thus :

17. "Imprisonment for a term not exceeding three months, and, on a second conviction, not exceeding six months, is inflicted upon him who, in public discourse, in writing, or by symbolical representations, attacks by contemptuous mockery, or malevolent expressions, the dogmas, the ordinances, and the customs of the oriental church, or other religion existing with the consent of the government."

18. "Whoever shall, by public discourse, teaching, writing, or symbolical representations, express himself to the scandal of others in manner derogatory to the reverence due to the Creator of the universe ; whoever shall express such principles, opinions, or sentiments, as are repugnant in general to the bases of religion and morals, or as are otherwise injurious to religion or to morality ; whoever shall endeavor to justify acts characterized as offences or crimes by the law, shall be sentenced to imprisonment for a term not exceeding three months ; and, on a second conviction of the crime, shall be punished with imprisonment for a term not exceeding six months."

Whereas, the motion of the attorney general, that the banishment of the respondent from the country be ordered at the same time, is founded upon the law, (articles 34 and 37 of the penal code,) because the respondent adjudged guilty, inveighing, as has been before set forth, so scandalously against the orthodox eastern religion, the canons, traditions, and its customs, is, in conduct and behaviour pre-eminently dangerous to morals, which are the bases of the Gospel and of this eastern religion ;

Therefore, considering also article 32, of the penal code, and 82 of the code of criminal procedure, sentences the said Jonas King, convicted as aforesaid, to fifteen days' imprisonment, to the costs of trial, and the duty on the stamps, to be collected by the committal of his person, and orders his exile from the territory of Greece, after the execution of the sentence of imprisonment. Adjudged and published at Athens, this 22d of February, 1852.

The President,

B. K. NICOLOPOULAS,
CONST. PAPASPIRIDES,
N. KALLISPERES,
J. BONISERES,
K. J. ŒCONOMIDES,
A. MATAKIDES, *Clerk.*

For the accuracy of the copy, Athens, the 22d of February, 1852.
[L. S.]

CH. A. ANASTASOPOULOS,
Under Clerk.

M.

Final judgment of the Areopagus.

[No. 18.—PENAL SENTENCE.]

The court of the areopagus—consisting of the judges, G. A. Ralles, president, A. Polygoïdes, vice president, P. Speliades, A. Bulgaris, P. Papparagopoulos, J. G. N. Mamomates, B. J. Œconomides; present also the attorney general, J. A. Somakes, and the clerk, G. Koutopoulos—assembled in public session the 10th of March of the present year, (22^d of March, N. S.) to hear and determine the appeal following, of Jonas King, present by his attorneys M. Renieres, A. Balanos, S. Pellicas, D. Kyriatos, M. Potles,* and Sp. Triantaphylles.

The council of the court of correctional police, at Athens, by its order No. 401, of the 23^d of August, 1851, sent down Jonas King to the bar of the same court of correctional police, to be adjudged guilty for that [by] preaching, in the years 1850 and 1851, within his house in this place, publicly, in the exposition of the sacred scriptures—that baptism is no other than a simple symbol, and consequently it is indifferent whether one is sprinkled or immersed; that those who eat a little bread and drink a little wine are foolish in thinking that they shall be saved by this communion; that the most holy Mother of God is not ever-virgin; that those who worship her, as also the other divine images, are idolaters; that he does not accept the sacred councils and the things ordained by them in religion, and handed down by tradition to the orthodox Christians in later times; that the fathers and the saints of the orthodox oriental church of Christ were deceivers, and, as a consequence of this, they brought in divers heresies; that holy baptism is no other than an external sign for Christians; that they who keep lent are foolish; that many deceivers have come into the world, and have brought in many and divers heresies among men, saying if a man sin it is good to give alms to the poor, that God may forgive the sin, and to pray to certain men, whom they call saints, that they may act as mediators with God, that his sins may be forgiven, &c.; in public discourse, by contemptuous mockery and malevolent expressions, did attack the dogmas, the ordinances, and the customs of the oriental church, and did express opinions and sentiments contrary in general to its bases, and having an injurious influence, that is contrary, to wit, to articles 17 and 18 of the statute concerning reviling, &c.

From this order the accused took his appeal, upon which was published, the 10th of September, 1851. No. 2,485, the judgment of the council of the court of appeals, in this place, by which his said appeal was rejected, the order from which he appealed affirmed, and the articles 17 and 18 of the law concerning reviling, &c., were applied. And of this judgment, the same accused prayed the reversal, and the areopagus published, on the 20th of December, 1851, its judgment, No. 117, by which it reversed the said order, No. 2,485, of the court of appeals, in so far as concerned the application of article 18 of the law

* Mistake for G. Bellius.

concerning reviling, but denied his prayer of reversal of the same order, in so far as regarded the application of the article 17 of the said law.

In pursuance whereof, the case in question was brought before the court of correctional police in this place, the 22d of February of the present year; trial being had, the said court, by its sentence, published the same day, No. 704, adjudged the aforesaid Jonas King, born in Hawley, in America, and residing in Athens, guilty of violation of articles 17 and 18 of the law concerning reviling and concerning the press; and, by the same judgment, sentenced him to fifteen days' imprisonment, to the costs of trial, to be collected by the committal of his person, and further ordered his banishment from the territory of Greece, after the execution of the sentence of imprisonment.

Of this sentence the respondent convicted, King, prayed the reversal, for the reason that it was not true that he had mocked, or reviled, or used malevolent expressions against the eastern orthodox religion, and that he had not attacked the reverence due to religion in general, contrary to the articles 17 and 18 of the law concerning reviling.

The attorneys of the appellant, by their written motion, added the following causes of reversal:

1st. Because in the adjudicatory part of the first point decided, the "expressions" held punishable are not set forth in certain, nor the opinions and sentiments which are contrary to religion, in general.

2d. Because, as to the first branch of the offence found, the court expressly adjudges that "the calling of the Mother of God simply a woman, and (affirming) that she bare also other children, and that the communion—that is, the body and blood of our Lord Jesus Christ—is bread and wine," are malevolent expressions, whereas these expressions are manifestly not malevolent, but are simply contrary to the dogmas and the traditions of our holy religion, which does not render these expressions punishable, because they do not imply any malevolence against our traditions and dogmas; so that the court of correctional police erroneously applied the 17th article of the law concerning reviling, &c., ruling that [the offence of using] malevolent expressions against the dogmas, &c., of the oriental orthodox church is committed whenever one simply expresses principles contrary to those consecrated by the dogmas.

3d. Because the areopagus has power to interpose in this inquiry, inasmuch as it is not called upon to find facts, but to determine the legal character of the facts which the court of correctional police considered, in assigning to them this or that legal character.

As to the second branch of the conviction: 4th. Because, by the judgment of the areopagus, No. 117, the decision of the court of appeals in this place, No. 2,485, was reversed, in so far as concerned the application of article eighteen of the law concerning reviling in general and concerning the press, inasmuch as the areopagus considered that the decision reversed did not find any act provided against by the eighteenth article, and the decision was affirmed, in so far as regarded the application of the seventeenth article, so that there could be no longer any charge sustained or conviction pronounced, in virtue of article eighteen, first, on account of the reversal adjudged (by the areopa-

gus,) and, secondly, on account of the change in the nature of the prosecution; for, as the criminal charge now was, and could be, founded only upon the violation of the seventeenth article, the court below could not, lawfully, find a violation of the eighteenth article, which provides against an act altogether different.

5th. Because the court below found a violation of the eighteenth article, on account of new circumstances, not set forth in the indictment, and which, according to the opinion published, appeared at the trial, and the court below does not certify what those new circumstances were, and does not say from whence it derived (the proof of them;) whereas, from the record of the proceedings, it appears that not only nothing was said relative to this charge, but that the witnesses deposed to the same effect as they had deposed on the inquest, and that, from a comparison of the indictment with the opinion aforesaid, it is evident that the court below founded that opinion upon the same facts on which the councils had before acted, so that, as the areopagus did not then find set forth in the indictment any acts punishable by the eighteenth article, so now, also, it will not find such.

6th. Because the eighteenth article provides against the expression of principles, opinions, and sentiments contrary to the grounds of religion in general, whereas all the acts charged in the bill of indictment consist in expressions relative to the dogmas, &c., of the orthodox eastern church; so that this article was wrongly applied.

7th. Because, whether the judgment (of said court of correctional police) be considered erroneous, as to the application of both the articles, seventeen and eighteen, or of one of them only, the entire judgment must be reversed, inasmuch as in the latter case, also, the reversal affects the whole judgment, which sets forth, as a substantive ground of conviction, the adjudication of the second finding of guilt, (viz., under article eighteen,) and the sentence imposed by the court of correctional police is founded upon the violation of both the articles seventeen and eighteen, and the areopagus has not the power of apportioning the measure of punishment imposed for the violation of the one of these articles, the court which judges of the *fact* alone possessing this power.

As to that part of the sentence by which the exile of the respondent from the country was ordered: 8th. Because the facts, upon which this branch of the sentence was founded, ought to have been distinctly found by the original judgment, which pronounced the respondent guilty, inasmuch as, after this finding, nothing can be urged except with regard to the application (degree) of the penalty, and the question of the existence or non-existence of substantive facts affecting the kind of penalty to be imposed, is no longer open; and, in the present case, not only did the court of correctional police, in the adjudicatory part of their said original judgment, fail to find that the respondent is, in his behavior and conduct, pre-eminently dangerous to morals, but did not, even in the recitatory part of said judgment, make any suggestion to this purpose.

9th. Because, according to article thirty-four of the penal code, the surveillance of the police is imposed upon natives, (which is of the same effect as the exile of aliens from the country,) when both by their

manner of life, their character, and their conduct, they would be pre-eminently dangerous to the common safety and to morals; and in the present case the court of correctional police does not declare, first, that the respondent is dangerous *also* by his character, (which was a necessary requisite, because the three things contemplated by the law are required for the application of it, as appears from the use of the conjunctive "both"—both by manner, character, and conduct;) and, secondly, that the respondent is dangerous to the common safety, whereas the law requires that the party convicted be dangerous to the common safety *and to morals*.

10th. Because, by the original judgment of the court of correctional police, it is not found that Mr. King attacked morals; so that the court could not modify the form of conviction so as to apply exile, nor is there any mention made concerning *good* morals, which the law supposes.

11th. Because Jonas King, *first*, as an American, *second*, as American consul, could not be exiled from the country, by virtue of the treaty between America and Greece, the 10th and 22d December, 1837.

Having heard the arguments of the reporting judge, A. Bulgaris, the attorneys of the appellant, and the attorney general, having deliberated according to law, as to the first cause of reversal; whereas, the court which judged of the fact, in the adjudicatory part of the judgment appealed from, sufficiently specifies the character of the punishable act provided against by article 17, of the law concerning reviling in general, and concerning the press, and pronounces the appellants guilty of this act, and in the recitatory part, sets forth with certainty the facts upon which it founded its conclusion, which facts it was not bound, on pain of reversal, to repeat in the adjudicatory part, it being sufficient that there be contained therein the conclusions flowing from the facts set forth in the recitatory part.

As to the second.—Whereas, the court of correctional police of Athens, having in its sovereign authority weighed the actual facts, did conclude that said facts do constitute the crime provided against by the said article 17, the areopagus cannot interfere in the determination of those facts, since the legal character of the act is rightly defined.

As to the third, fourth and fifth.—Whereas, as appears by the opinion of the areopagus, No. 117, of the last year, Jonas King was sent down to be adjudged guilty of the punishable act provided against by the said article 17, of the law concerning reviling in general, and concerning the press, and the article 18 does not contemplate simply circumstances in aggravation of the act defined by article 17, but provides against a substantive and independent offence, therefore, the court of correctional police of Athens could not convict Mr. King of a violation of article 18, because, as appears from the record of the judgment appealed from, he was held for trial upon the bill of indictment, found by the council of the court of appeals, as amended (by this court,) and as the reason upon which the court below founds its judgment, (*pro tanto*) namely, that on the trial circumstances appeared, from which it found (was persuaded of) a violation of the article 18, is, in this case, erroneous, because, though the courts (in pays) can take into consideration circumstances which appear upon trial, yet this is only in the way

of aggravation or mitigation of the offence charged, and not when they constitute a substantive punishable act, in respect of which there is no presentment as required by law, and, consequently, the respondent is not put on his defence in that behalf, and, for this cause, the judgment appealed from is reversed, *pro tanto*.

As to the sixth [and seventh.]—Whereas, even though the said judgment, as has been said, is erroneous, as to the application of article 18, it is, nevertheless, none the less sustainable as to that of article 17, because the offence found, so far as regards this article, rests upon actual specific facts, and is correctly characterized (designated or described) according to the terms of the law, consequently, the entire judgment cannot be reversed; but the areopagus, affirming the same, as respects the conviction under article 17, and no specific punishment having been imposed for the violation of article 17, ought, in accordance with the sense of article 500, of the code of criminal procedure, to apply the proportionate remedy defined by law.

As to the seventh, [eighth.]—Whereas, the provisions of article 37, taken in connection with article 34, of the penal code, have no respect to the element of criminality, in the criminal act imputed to the person accused, but merely specify a consequence of conviction, in case where the criminal court is persuaded that the person already convicted is, from his manner of life, character, or his conduct, pre-eminently dangerous to the common safety, or to morals; therefore, the motion for the banishment (of the respondent) from the Greek commonwealth, was rightly made and considered, after the public adjudication of the guilt, (of the respondent,) during the consideration of the application of the penalty, and the facts disclosed on which the court grounded its belief that there existed a legal case of banishment of the respondent convicted, from the Greek realm, were duly set forth in the sentence ordaining the application of the punishment.

As to the eighth, [ninth.]—Whereas, from the logical and legal sense of article 34 of the penal code, it undoubtedly appears that it is not necessary, for the application of this article, that the person adjudged guilty should be, from his manner of life *and* character *and* his conduct, pre-eminently dangerous, both to the common safety and to morals—that is, that all these circumstances should co-exist together; but it suffices that one of them exist, and that the person convicted should be pre-eminently, either from his manner of life, *or* from his character, *or* from his conduct, dangerous to the common safety or to morals; and, in the present case, as the court *in pays* find that the appellant is, as to his manner of life and his conduct, pre-eminently dangerous to morals, therefore the law was correctly applied.

As to the ninth, [tenth.]—Whereas, in the sentence prescribing the application of the penalty, where the same was requisite, it is found that King “attacked morals,” and this manifestly means *good* morals; and—

As to the last, [eleventh,] cause.—Whereas, this cause of reversal, namely, that King is an American and consul of America, was not moved at the trial, consequently the areopagus ought to assume that the appellant formally waived this plea; but, even in the contrary case, this objection involves a question of fact which, as such, ought to have

been raised before the court *in pays*. But from the record of the session of the court of correctional police, in this place, the 22d of February, 1852, it appears that the appellant did not take this exception; therefore it is inadmissible as now taken, for the first time, before the areopagus.

Now, for the causes aforesaid, the court here, considering articles 34 and 37 of the penal code, and article 82 of the code of criminal procedure, reverses the judgment of the court of correctional police in this place, No. 704 of the year 1852, so far only as thereby Jonas King was adjudged guilty of the violation of article 18 of the law concerning reviling in general and concerning the press, denies the prayer of said Jonas King for reversal of the same, so far as respects the remainder of said judgment; and affirms the aforesaid judgment of the court of correctional police of Athens, as respects the conviction of said Jonas King, for that he, in the years 1850 and 1851, in this place, in public discourse and teaching, attacked, by malevolent expressions, the dogmas, the ordinances, and the customs of the eastern orthodox church, contrary, to wit, to article 17 of the law concerning reviling and concerning the press; and by virtue of this said article—which provides “imprisonment for a term not exceeding three months, and, on a second conviction, not exceeding six months, is inflicted upon him who, in public discourse, in writing, or by symbolical representations, attacks, by contemptuous mockery or malevolent expressions, the dogmas, the ordinances, and the customs of the oriental church, or of other religion existing with the consent of the government”—sentences the said Jonas King to fourteen days’ imprisonment, and to the costs taxed in the court of correctional police, to be collected by the committal of his person; affirms the same judgment of the court of correctional police, as to its sentence of banishment of the same Jonas King, as an alien, from the Greek realm; orders that the present judgment be written on the margin of the original of that reversed, in so far as regards the part reversed, and that the same be published, through the press, at the expense of the public, upon which it imposes the duties on the stamps; and further orders that the moneys deposited be returned to the appellant.

Adjudged, determined, and published at Athens, this 13th (27th) of March, in the year 1852.

The President :

G. A. RALLES.
A. POLYZORDES.
P. SPELIADES.
P. PAPARAGOPOULOS.
J. G. N. MAMOMATES.
K. J. ŒCONOMIDES.
A. BULGARIS.
G. KOUTOPOULOS, *Clerk*.

A true copy. Athens, 26th March, (7th April,) 1852.

ENS. CONSTANTINIDES,
Under Clerk.

[L. S.]

N.

The several specifications of the general charge upon which Dr. King was tried, convicted, and sentenced, with the evidence applicable to each.

Preaching publicly :

1. That baptism is nothing other than a simple symbol, and consequently it is indifferent whether one be sprinkled or immersed ; and—

7. That holy baptism is no other than an external sign for Christians.

Evidence in support of the 1st and 7th specifications :

Demetrius Demakes deposes that Dr. King taught “that we wrongly believe that by baptism the sins of man are washed away,” (p. 83.)

John Restamopulos, “that man, even if he washed in the rivers, cannot be purified from his sins ; consequently, according to his ideas, which all Europe had received, sprinkling is more correct than baptism, [immersion ;] or, that if it be wanting altogether, it is indifferent. As, for example, he stated that as it is indifferent whether a general has a small or a large standard, so likewise it is indifferent whether a person be baptized [immersed] or sprinkled,” (p. 99.)

Alexander Lycurgus, [testimony entirely hearsay,] that the respondent “uttered * * * * blasphemy against baptism ; that it is not a mystery, and consequently it is no matter whether a person be baptized or not,” (p. 137.)

2. That they that eat a little bread and drink a little wine are foolish in thinking that they shall be saved by this communion.

Demetrius Demakes deposes, that the respondent said that “the wine and bread are not changed in substance, as we think, into the blood and body of Jesus Christ, and, for this reason, a man may, under all circumstances, commune freely,” (p. 83.)

George Glines, that he “touched lightly upon transubstantiation,” and said that “it (transubstantiation) does not present, as we understand it, the body and blood of Jesus Christ,” (p. 88.)

John Paeonides, that “transubstantiation is nothing but simply a type, in remembrance of the Lord’s Supper, and in remembrance of his death, and not his body and blood,” (p. 93.)

Demetrius Sakellarius, that “speaking about transubstantiation, he (Dr. King) does not believe that the bread and wine are changed into the body and blood of Christ, but that Jesus Christ gave this command in simple remembrance of his sufferings,” (p. 106.)

3. That the most holy Mother of God is not ever-virgin.

Demetrius Demakes deposed, that “once, *in private*, when he (the deponent) asked him what were his opinions of the Mother of God, he told me, (both he and his wife,) that we ought not to call her Mother of God, and that she did not remain a virgin, because she bare other children also, as he argued from the Gospel according to Mark, chapter 6, verse 1,” (p. 83.)

George Glines, that “he inveighed [bore down upon] unreservedly, and without the slightest precaution, against * * * * the Mother of God,” (p. 88.)

[This witness does not state the language used by the respondent in “inveighing” against the Theotokos.]

John Paeonides, that "concerning the virgin, [all-holy,] he (the respondent) believes that she bore Christ, and according to the flesh, as man, but not according to essence; arguing that Christ, in respect to his humanity, was without father, but in respect to his divinity, without mother; and that afterwards she lived with Joseph, as a woman," (pp. 92, 93.)

Emmanuel Demides, that the respondent "attacked * * the Mother of God and her virginity," (p. 102.)

Demetrius Sakellarius, that "concerning the Mother of God, he said that we ought not to call her Mother of God, because in no part of scripture is this epithet used, but Mother of Jesus Christ," (p. 105.)

Alexander Lycurgus, (heresay,) that "he uttered blasphemy against the Mother of God, saying that she ought not to be so called, but Mother of Christ," (p. 137.)

4. That they who worship her, as also the other divine images, are idolaters.

Demetrius Demakes deposes, that he heard the respondent "inveighing against the sacred images, saying that we should not reverence them," (p. 82.)

George Glines, that "he inveighed unreservedly, and without the slightest precaution, against the holy images. * * * And against the images and the cross, he said that they ought not to be worshipped," (p. 88.)

John Paeonides, that "he (the respondent) does not approve of the worship paid to her, (the virgin Mary.) This I heard in a discourse after dinner. Likewise he does not approve of the honors ascribed to the images," (p. 93.)

Emmanuel Demides, that "he cited, as an authority, a passage of Epiphanius, in which he says, 'Let no one worship Mary.' * * In another teaching, taking as his theme the epistle of Paul, I think, in which, addressing the Athenians, he said that he saw them to be very superstitious, he attacked the holy images, insisting that the said passage means this also; that is, he considers the Athenians superstitious, as having many objects of worship," (p. 102.)

Demetrius Sakellarius, that "he said that we should not worship or adore images, which is particularly forbidden by the second commandment," (p. 105.)

Alexander Lycurgus, [heresay,] that "he misrepresents * * * the worship of the images of the saints," (p. 137.)

5. That he does not receive the sacred councils, and the things ordained by them, in matters of religion, and handed down by tradition to the later orthodox Christians.

Demetrius Demakes deposes, that the respondent, "in attacking the holy councils, said that they were organized by the emperors of those times, not for a religious end, but with a view to their political interests, and that the emperors made use of the confessing priests in order to learn the spirit and the objects of the people," (p. 82.)

George Glines, that he "inveighed unreservedly, and without the slightest precaution, against * * the holy councils, * * against the councils in three lessons, that their acts have no force and no validity," (p. 88.)

John Paeonides, that, "speaking generally, and not particularly, about the eastern church, he says that every church, whether in the east or in the west, not founded upon the holy scriptures alone, is mistaken," (p. 92.)

Emmanuel Demides, that "he attacks the holy canons and traditions of our religion. For instance," &c.—[Here follow several specifications, all of which are herein cited under the heads of accusation to which they are applicable.] "In like manner he attacked, also, several other of our ecclesiastical traditions," (p. 102.)

Demetrius Sakellarius, that, "speaking concerning the councils, he sometimes said that the first council strengthened christianity considerably, but afterwards they strayed, in order to oblige the emperors and to enrich themselves," (pp. 105, 106.)

6. That the fathers, and the saints of the orthodox oriental church of Christ, were deceivers, and thereby brought in divers heresies.

Demetrius Demakes deposes that he heard the respondent "always inveighing against * * the fathers, maintaining that the expositions which they gave of the scriptures are not correct; that God alone can interpret them. He, himself, notwithstanding, gave expositions, which he thought correct, and for this reason taught them to men," (p. 82.)

7. That holy baptism is no other than an external sign for Christians, (see 1.)

8. That those who observe lent are foolish.

Demetrius Demakes deposes that the respondent "attacked, likewise, fasts, (saying) that we ought not to fast, because that which we do is but a change of food, and not fasting," (p. 83.)

George Glines, that "likewise he opposed fasts, saying that we ought not to fast, arguing from the passage, 'not that which entereth in, but that which cometh out,' " (p. —.)

John Paeonides, that "concerning lents, he says that they are nothing but a change of food; but fasting, as he understands it, should take place, not on days appointed, but (occasionally,) according to the different circumstances in which Christians are placed," (p. 93.)

Emmanuel Demides, that "he spoke against fasts, (saying) that we ought not to fast," (p. 102.)

9. That many deceivers have come into the world, who have brought in many divers heresies among men, saying, "if a man sin, it is well that he give alms to the poor, that God may forgive the sin, and that he pray to certain men whom they call saints, that they may intercede with God for the forgiveness of (his) sins, and so forth."

John Paeonides deposes, that "as to what concerns the saints, he (the respondent) believes them to be in heaven, but does not approve of our considering them also as intercessors with Christ," (p. 93.)

Emmanuel Demides, that "he attacked the saints * * and the intercession of the saints," (p. 102.)

Demetrius Sakellarius, that "concerning the saints he said that we do not offer worship to them, which we owe to God alone," (p. 105.)

The foregoing extracts from the testimony of the witnesses for the prosecution comprise the whole evidence specifically applicable to any of the heads of accusation set forth in the *bouleuma* of the council, or bill of indictment.

It is, however, in proof that the respondent spoke against the celibacy of bishops and monks, and the retirement of monks from the world; which, though not noticed in the *bouleuma*, nor proved or declared by the courts to be among "the things ordained by the councils, and handed down by tradition," is, as is well known, practised in the Greek church.

The evidence on this point is as follows:

George Glines deposes that the respondent "inveighed unreservedly, and without the slightest precaution, against * * the celibacy of bishops and monks, and the separation of monks from the world. * * Against the celibacy of the bishops and monks, and their separating themselves from the world, he said that it is in opposition to the text, 'increase and multiply,' " (p. 88.)

John Paeonides, that "the not marrying of bishops, and the separation of the monks from the world, not only he has not found in any portion of the scriptures, but they are in opposition to certain epistles of Paul to Timothy and Titus," (p. 93.)

Emmanuel Demides, that "on another occasion, taking as a foundation the passage 'increase and multiply,' he attacked the celibacy of bishops, and the separation of the monks from the world, calling them rebels (or apostates) from the gospel," (p. 102.)

Demetrius Sakellarius, that, "speaking about bishops and monks, he said that the celibacy of the former, and the retirement of the latter, are not prescribed by the scriptures, but are particularly opposed to Christianity. He maintained the opinion that they should be married, and in the midst of the world, and not separate from it," (p. 106.)

Alexander Lycurgus, [hearsay,] that "he misrepresents the celibacy of the clergy," (p. 137.)

In addition to the foregoing, the following vague general statements occur in the testimony of the witnesses:

Demetrius Demakes deposes that the respondent, "in general, in his teaching, perverts the doctrines of our religion," (p. 83.)

Emmanuel Demides, that he "takes passages from the Gospel, or from the Apostles, expounding which with great hypocrisy, he perverts their true meaning." * * * "In like manner, he attacked also several others of our ecclesiastical traditions, endeavoring, however, always to conceal his aim, and assigning, as his principal object, the enlightening of erring nations," (p. 102.)

Alexander Lycurgus, that he knows that "the accused is opposed to our religion," and that he had heard from many persons that he "attacked and directly refuted our religion," (p. 137.)

The remaining portion of the testimony of the witnesses applies chiefly to the charge of proselytism, which was abandoned by the prosecuting attorney, and is not embraced in the *bouleuma*. For convenience of reference, however, and because it is believed that it influenced the minds of the judges, it is here given.

Demetrius Demakes deposes, that he believes that the respondent's "object is no other than that of proselytism." And the witness proceeds to argue the point, referring to his "regularity of teaching on appointed days and hours, in his private house, to persons having no connexion or acquaintance with him; to his private instructions and teach-

ings on every Thursday to those most devoted to him," [a circumstance of which there is no proof;] and declares that "when he saw that I frequented his teachings, and paid attention to them and showed devotion, he said that he would recompense me, since, as he observed, I received his words, and he incited me to communicate his doctrines to others also. He told me, moreover, that he recompensed also John Paeonides and D. Sakellarius," and that he [the witness] had been informed "that John Gougouses * * * is hired," (pp. 83, 84.)

He further states that "the said Paeonides, Sakellarius, and Michael Kalopothakes, not only endeavor to persude [persons] to frequent the teaching of King, but also in the private room of Paeonides collect together other students, and expound to them the Gospel according to King's manner of exposition." That, "at their instigation, I went myself to their teachings, and heard them teach the same doctrine, contrary to religion, as I mentioned above," (pp. 84, 85.)

George Glines deposes that the respondent had five or six hearers distinguished as regular," and "about ten others who appeared more regularly at the meetings;" that "the ten or twelve regular ones shared the principles of his doctrines, asserting that they did not meet in his teaching anything offensive, inasmuch as in his discourse he rests upon the scriptures;" and that, as he learns "from Kyriakoules, who learned it from Tzaxeres," "Paeonides teaches in his house like King;" "and prays like King, that is to say, without making the sign of the cross, and has his own forms of prayer, and not those received by our religion," (pp. 86, 87.)

John Paeonides, that "he said that his object was no other than to distribute the word of God, and to promote the reading of the scriptures, and to leave each one to judge the word of God according to his own ideas," (p. 94.)

Leonidas Kyriakoules details a conversation with Demetrius Demakes, [a witness for the prosecution,] to the effect, as stated above, in the extract from the testimony of Demakes, (pp. 97, 98.)

Emmanuel Demides states that he had heard from his "friends, Demetrius Demakes and Leonidas Kyriakoules, that the accused, besides his open preaching on Sunday, teaches also in the evening some who are considered as his proselytes, and who, in the meeting of the day appear, always more attentive and devoted, and, as Demakes says, it appears that King hires them for this purpose," (p. 103.)

Alexander Lycurgus, [hearsay,] that "he invited students, his friends and acquaintances, to listen, with the object of making them proselytes," (p. 137.)

George Melidones, that the respondent "asked him to become a missionary, that is, to change his religion, (the eastern,) and become an evangelist," (p. 138.)

John Restamopulus that, "from hearsay alone, he knows that he has, as proselytes, the sons of Geron, [or of an old man,] whom he pays," (p. 100.)

The fact of Dr. King's attempt at proselytism, and especially of the payment of money for that object, is denied, (pp. 94, 107,) by Paeonides and Sakellarius, two of the alleged proselytes, and the general charge of mocking and reviling, or malevolently attacking, the Greek

church, is denied by all the witnesses for the defence, (pp. 139, 143.) In order to complete this collation of the evidence, I add the remainder of the testimony of the witnesses for the prosecution, however irrelevant to the issue, omitting mere matter of form and inducement.

George Glines deposes, that "until the carnival he (Dr. King) had twenty or thirty hearers, * * * * but during lent the number of hearers increased to one hundred and thirty, among whom were five or six constant ones, and about ten others, who appeared rather regularly at the meetings." Among the constant hearers he names Pæonides, a witness for the prosecution, (p. 86.)

During the testimony of Glines, when he referred to the fact that he had taken notes of Dr. King's discourses, but lost them, the presiding officer of the council produced a manuscript, (p. 89,) and asked the witness if it was of his composition. The paper was not read before the council nor at the trial, but the witness identified it as his own, said that he "had heard him teaching that, and, with the intention of addressing some questions to him, in order to show the falsity of his arguments, I drew up this memoir, so to speak, and went to his house that day to the meeting," (p. 89.)

Theagenes, a divinity student, had the same object, and anticipated the witness, and "addressed certain questions to King relative to his teachings. Wherefore I was silent, waiting by Theagenes, in order to help him if he should need assistance," (p. 89.)

Dr. King proposed to confine the discussion to the preaching of the day, "which had nothing reprehensible."

"Theagenes assented to this, and decently commenced the discussion of one example, which on that day King had advanced, calling himself, with much particularity, Abel, as telling the truth, but as Cain, because we wished on that account to injure him; thence he proceeded to the teaching of the preceding meeting, when his wife interposed, and prevented Theagenes from proceeding in his questions. On this account the hearers began to insist that he should talk that day. But King pretended that he wished to talk, but that his wife would not allow him. Whence there arose a small disturbance, and we dispersed.

He further states that Demakes, one of the principal witnesses for the prosecution, "feigned proselytism," and he refers to some others as capable of furnishing information," (pp. 89, 90.)

John Pæonides deposes to the fact, which is not disputed, that Dr. King holds public religious meetings "on Sundays, at eleven o'clock, a. m., and at five o'clock, p. m.," on which occasions, "he takes as a theme a part of the scriptures, or of the Gospel, and interprets it in the presence of the hearers," and in the afternoon service, besides "reading a chapter of the Old Testament, he offers a prayer;" that Dr. King declared that "his aim was no other than to distribute the word of God, to promote the reading of the scriptures, and to leave each one to judge the Word according to his own ideas," (p. 94.)

This witness denies the fact of the payment of money by the respondent, with a view of proselytism, and states that he [the witness] was in the habit of holding religious meetings, in which he read a part of the Old and the New Testaments, at his own rooms, (p. 94.)

Leonidas Kyriakoules, that he "attended regularly on Sundays and

took notes of the lessons ;" "and when on my last visit, I wished to ask an explanation, and to oppose him in his heterodox preachings, he sent me away without even giving me an answer to my questions," (p. 96.)

The witness then produced a number of the "Age" for January 17, 1851, containing a petition of his to the synod, detailing "what relates to the teaching of King." Also, another number of the same paper, containing a confirmation of his statements, signed by another person. Neither of these papers were read before the council, nor at the trial, neither is there any statement of the purport of the articles referred to. He states further, that other students, "having heard the teaching of the respondent, repugnant to religion," petitioned the holy synod, by their memorial, "exhibiting exactly all that they had heard," which the witness subscribed, (p. 97.)

John Restamopulus, that he asked the respondent to give him a Testament [Septuagint.] That King required a recommendation from the teacher Constantinides, and said that the books [meaning evidently the Apocrypha] were not inspired, and quoted "St. Athanasius who mentions which are canonical." That he proposed to give the witness "some of his own books, which were good," and inquired whether the witness "went to his teaching," (p. 100.)

D. Sakellarius, that the respondent told him "that he did not hinder, but received whoever happened to come" to his meetings, and that he continued to attend the meetings, because he "saw that the preaching was Christian and moral," and the witness "thence took occasion to study the scriptures," (pp. 105, 106.)

The preceding testimony constitutes the entire evidence for the prosecution, and upon this evidence (for there is no pretence that there was any other "confession of the respondent," than his admission before the council on the inquest (D. p. 76,) that "he did not deny the teaching he practised," and it appears from the record of the proceedings (p. 144) that he insisted that the "charge of reviling the Greek religion was false") the court of correctional police, sitting in pays, finds the specific allegations set forth on pp. 152, 153; and as a court of law, the general conclusion, pp. 154, 155, that the respondent "in public discourse and teachings, attacked, by malevolent expressions, the dogmas, the ordinances, and the customs of the eastern church, and expressed such principles and opinions, and sentiments as are contrary, in general, to the grounds of religion, and are injurious to religion and morals."

O.

Facts found by the Court of Correctional Police.—(L. pp. 151, 152.)

That the accused, in his public teaching, called by him preaching, did not confine himself to the exposition of his text, according to his religion, but going, of set purpose, beyond his proper sphere, did malevolently revile our holy canons, and the traditions of the oriental church.

1, 2, 7. Not admitting as mysteries, baptism and transubstantiation, and—

1. Touching baptism, that it is indifferent, and—

7. Whether it be by immersion, or by sprinkling, (which he considers as more correct) because the baptized is not purified by it from sin, and that those who think the contrary are foolish ;

2. That the communion is only bread and wine, and cannot be any other than a simple type for remembrance ;

3. That the mother of God is the mother of Christ, and simply a woman, who did not remain a virgin after the birth [of Christ,] but bare also other children ;

4. That we ought not to worship her [the virgin,] that the worship of the holy images is idolatry ; that * * * the mother of God can [not] mediate for us with God ;

5. That, with the exception of the first council, the others were the invention of the emperors, for political purposes, and, for this reason, their acts are of no authority ;

6. Nothing found ;

7. See [1.]

8. That the facts * * * are contrary to the divine commands ;

9. That we ought not to worship the saints, because they are simply men, and * * * can [not] mediate for us with God, and that they who profess this are foolish.

Also, the following facts, not set forth in any of the specifications of the bill : That the accused taught that the celibacy of the monks and prelates is contrary to the divine commands ; that in this teaching * * * he had no other hearers but the children of the orthodox eastern church ; that from his teachings, scandal arose among his hearers, and on certain Sundays some of them undertook to refute him, but he was not willing to enter into a contest, and, in order to compel them to go away, he hoisted in his house the American flag ; that besides the teaching on the Lord's day, at eleven o'clock, he received also in the evening, every Sunday, at a specified hour, some of his chosen ones, to whom he spoke concerning religion ; and finally, that not seeing, for some Sundays, the witness, G. Meledon, he sent to him to know why he did not continue to come to hear him, and invited him to come, and also invited to this another witness for the defence, and, in general, he was pleased when he saw many hearers.

P.

Translation of a placard circulated and posted up in Athens on the day before the trial.

NOTICE.

To-morrow, Friday, the 22d of February, will be finally tried the notorious false apostle, Jonas King, before the court of correctional police at Athens. Therefore, all Christ-loving people who desire to be

present at this curious trial, can attend the said court at 10 o'clock, a. m., and hear this false apostle convicted of babbling against the Mother of God, against the saints, against the images, and in general against all the mysteries, dogmas, and traditions of our holy church.

ATHENS, *February* 21, 1852.

Q.

Extracts from the statements referred to on page 53 of the report.

Statement 1st.—In respect to the order maintained in the court, there were, indeed, measures previously taken by the head of the police to keep some degree of quiet among the throng of by-standers, and the president occasionally expressed some determination to put them in force. Yet, had any documents been brought forward by Dr. King, or his counsel, (as had, I am informed, been their intention,) to prove that many, if not all, of the doctrines he was condemned for teaching and believing were taught and believed by the fathers of the Greek church themselves, I am disposed to think that all the authority of the court, and strength of police in attendance, might not have sufficed to restrain the excited mob from attempting violence to the person of the accused.

A crier of the court, in attempting to enforce silence upon some priests who were hooting and inciting the people to hoot at Dr. King, was obliged to call upon them to be still, and for so doing, his badge of office was taken from him, and he was turned out of the court-room by order of the president.

In the examination of the witnesses, the president of the court, in my opinion, evinced manifest partiality towards the testimony, to the prejudice of the accused, and towards those who so testified, whether their evidence was pertinent or not. On the other hand, I am equally convinced that the court manifested, through the president, a determination to browbeat the numerous and respectable witnesses for the defence—a course which, combined with the tumultuous applause, or the equally pronounced disapprobation of the audience, to a great degree encouraged by the supineness of the court, not a little disturbed the self-possession of the witnesses, and interfered with the fairness of the trial.

I shall not advert to the appearance of the witnesses for the prosecution, further than to remark the feeling they were permitted to exhibit, and the latitude of testimony in which they were indulged.

The attorney general, in arguing in support of the prosecution, was allowed a yet wider range. Not at all confining himself to the only legal proof which the court was competent to consider, he introduced several small books, one of them published near thirty years since in the United States, before Dr. King had ever touched the shores of Greece, another printed in the United States, and a third printed in Greece, in 1845. Of none of these did he even attempt to prove the authorship; yet he endeavored to argue from them, in support of the charge, that “during the years 1850 and 1851 Dr. King reviled the Greek religion in public discourse.”

In quoting extracts from these writings, he spent probably more than half of a long and violent address, and in this he was countenanced by the court.

Dr. King's counsel, though, as it appeared, somewhat influenced by the presence of the mob, attempted to refute the arguments of the attorney general, and objected that he had improperly cited the books in question, and erroneously moved the application of the 18th article of the statute. But they were interrupted by the president, who told them that they could not be permitted to say that the attorney general had spoken improperly.

So frequently, indeed, were the counsel interrupted in their argument, that one of them declared that he could not proceed thus, and that if he had uttered anything contrary to decorum, he ought to be punished, and not continually interrupted.

The respondent's counsel were also frequently disturbed by the vociferations of the audience, to suppress which the court did not, in my opinion, exert its full authority.

After the argument of Dr. King's counsel, the attorney general replied; and I believe the record of the court asserts, that an opportunity was given to Dr. King to speak in his own defence. Such was not the fact. The president immediately inquired of the counsel, whether *they* had anything further to add, and upon their answering in the negative, the president declared that the court had risen. Instantly Dr. King rose, and said that an opportunity had not been given him to speak in his own defence. The president replied, that such opportunity had been furnished to him, or at least, to his counsel, and seeing some papers in the hands of the respondent, told him to hand them to him, and the court would examine them, and take them into consideration in their deliberation. Dr. King insisted on speaking, or at least explaining, in a few words, the papers he held in his hands, and he did so for a few minutes, whilst the judges, who manifested much restlessness, remained standing, or presently dropped into their seats. But, into no regular defence did either the patience of the judges, or the noisy audience, allow Dr. King to enter, nor was his speech extended over the space of five minutes, I think.

Statement 2d.—I was present at the above mentioned trial, and did not leave the court room from the commencement to the close.

My opinion was, and is, that Dr. King has just cause to complain that he was not fairly dealt with, and especially in the following particulars.

One of the principal witnesses against him, Kyriakoules, conducted himself in the most disgraceful manner. Whether intoxicated by the spirit of wine, the spirit of fanaticism, or the spirit of vanity, he was surely not *sober*; but, on the contrary, wrought up to the highest pitch of excitement. Before the trial commenced, he was moving to and fro among the crowd, calling on his fellow-witnesses to come forward, as if he were the chief marshal of the day, and trying to intimidate, by threats, the witnesses of the opposite party; and all this with the wildest looks and gestures, more like a madman, than like one in his senses.

In giving his testimony he could not be made to address himself to

the court, and answer the questions put to him, but was continually turning to the audience and beginning to declaim violently against Dr. King, and to point out, by name, the witnesses for the defence as proselytes of Dr. King, with the evident intention of exciting the crowd of auditors. This was the man who had given occasion to the whole proceeding against Dr. King, by his letter published in the newspaper, giving a perverted account of Dr. King's preaching, and by getting up the petition to the holy synod, which led to Dr. King's presentation for trial.

Another of the witnesses, Melidon, also showed evident symptoms of a violently prejudiced, if not disordered, mind.

The attorney general, in his argument against Dr. King, seemed to me to proceed improperly, in introducing as evidence three books published in Dr. King's name, one of which was published before Dr. King was resident in Greece, and all before the period embraced in the indictment.

It seemed to me unjust, that Dr. King was not permitted to speak in his own defence at the close. Whether, in the excited state of the audience, it would have been prudent for him to have said all he had purposed or not, it is certain that the presiding judge did not allow him to say what he wished, and the little he did say, was said under the disadvantage of repeated interruptions from the president,, nad in a manner, in spite of the court.

R.

CASE OF THE REV. JONAS KING, GREECE.

Orgies performed in the Rites of Marriage and Baptism.

The enemies of Mr. King's mission, finding that they could not prevail against him, by any lawful means, had recourse to lying; and of all the false witnesses that came, a man by the name of Simonides, who had spent some years with the monks on Mount Athos, was the principal.

Wednesday, the 28th of July, 1847, an article appeared in "The Age," one of the first newspapers in Athens, called "*The Orgies*," and signed by Simonides, stating that he was present at Mr. King's house, on certain nights, when these orgies were performed by Mr. King, and that he, (Simonides,) had been an eye-witness of the whole, and was ready to be examined on the subject by any court of justice.

In this article he confined himself to the orgies of marriage and baptism. He gave the names of five different couple of Greek proselytes, whom, he said, Mr. King had united in marriage according to these orgies, names unknown to Mr. King, and of people, who, he presumes, are not to be found anywhere in or out of Greece. To these Simonides added the names of two other couple, who, he said, were about to be united in marriage, and these were persons who actually exist, and who had, at various times, attended Mr. King's Greek service on the Sabbath.

Simonides then proceeded to describe, with great particularity, these orgies, which, he says, he witnessed, giving the day and the hour when performed, and the exact number of persons present, as follows:

The Mystery of Marriage.

The 14th of December, (26th, N. S.,) 1846, Saturday, at 11 o'clock at night, all the faithful proselytes, 25 in number, of whom five were males, and the rest females, being assembled around the table, and having prayed, according to their custom, after prayer arose, except King and the five males, and taking ribbons which lay on the table, went into a bedroom. After ten minutes they came out, arrayed in white raiment, with locks dishevelled, and girded with red ribbons, and with their arms bare, except one, who was naked to the zone, and covered with a red transparent garment, with the feet bare, and the head covered with a golden veil, and who was led by two young damsels with slow steps silently along, the rest following them, holding in their left hand large lighted wax candles, beautifully adorned, and in their right hand a piece of broken images. Coming, they stood before the face of King, and of the other five, who prayed about five minutes; then kneeling down, they put their heads in their bosoms. Then King, rising up, embraced them, and taking them by the hand, one by one, raised them up, till all were risen. Then approaching the one having the golden veil, he took her by the hands, and brought her to the holy ribbon. Both embraced her, and afterwards kneeling down, they prayed ten minutes; then they rose again, and stood speaking as ventriloquists. The rest lifted up their left hands, with large lighted wax candles, dropped the pieces of the broken holy images from their right hand before their feet, and trod on them with their right foot with anger, showing them to the young damsel with the golden veil. The same instant they arose, and the men, embracing King and the ladies, remained standing near the ribbon. King approached the table, and taking a golden garment, and approaching the young men, covered the one in the middle, and again returning, took the young damsel by the hands, and remained motionless. The young man, proceeding to the bed chamber on the right, came out with a red golden bordered garment, and a green girdle, having his head and feet uncovered. As he approached, King took him by the left hand, and brought him before the altar, together with the young lady. Then the other young women and men fell on their faces to the earth, except two, who played an exciting hymn with cymbals. King, taking the large wax candle near by, (which belonged to the young damsel,) after a prayer, knelt down, and with a loud voice said, "Great God, save them." The cymbal confused the voice. Then all arose, and taking the candles and the broken images, approached the altar, dancing and singing, like maniacs. But while they were singing, I saw King suddenly raise his hands, holding a piece of broken image, which he afterwards put on the altar, and pouring upon it spirits of wine, put near it a lighted candle. Then I saw the image burning, by means of the spirits of wine, and I heard him anathematize those who worship them. After two seconds, the other females, at his beck, threw down the pieces which they held, and

they also anathematized, as he did, with a loud voice. Then King, lifting up his voice, said: "Thus shall God burn all who worship them." Afterwards he took oil, and anointed an image of the Mother of God, which was very small; he said: "Let us consecrate it as your foolish fathers have done, and see if it will not burn." Immediately he threw it into the flames, and the music of the cymbals commenced. Then King, laughing, said ironically: "Behold the woman, called by your fathers the Mother of God, how she burns, though consecrated. All shall be burned who believe such things." Then came a girl, twelve years old, who brought on a waiter bread and wine, and gave it to him. King, taking the bread, cut it, and poured upon it wine. Then kneeling down, with the waiter in his hands, after five minutes he arose, and going around the altar twice, cast a part of it into the flames, and said: "Burn those who believe that this is body and blood." Then, casting a part of it on the ground, he said: "Give into the hand of aliens, those who believe this to be body and blood, that they may come together." Then, throwing a part of it into the air, he said: "Destroy them from the face of the earth, because their impiety has gone up even to heaven." But, with the remainder, he anointed the cheeks of the proselytes, saying: "Save and preserve these, who know thy truth." Then immediately began a dance around the altar, and after the dance, blasphemies against the orthodox church, and after the blasphemies, King caused the young man with naked feet, and the young damsel with the golden veil, to swear upon the holy ribbon that they would remain firm till the end of their lives, for, should they do otherwise, they would be punished with the death of God. While they were thus being sworn, the others prayed. After the oaths, King brought the young man and the young woman to the altar, and taking the right hand of the young man, he placed it upon the left breast of the young woman, and the left hand of the young woman upon the head of the young man, and he placed at their feet an image of the Mother of God, which, at his command, they trod upon, the young man with his left foot, but the young woman with her right. Then King, with the other faithful, embraced them on the cheeks.

Then they danced around them about ten minutes, singing and playing on the cymbal, and, after the dance, King took two red ribbons, and put one on the head of the young man in form of a circle, and the other on the head of the young woman in form of a square, saying: "I unite you according to the flesh, as you wish, that you may give seed to the glory of God," and immediately began the music of the cymbal, hymns, and dance, which continued about half an hour. After this they rested, drinking wine of a delicious flavor, and immediately after the potation, all the young women, dancing, led the young woman into the bed chamber, but the young man, King, and the other men, led, and, with shouts, put them in a bed near by. Returning to the gallery, they sung and danced about half an hour, and while they were yet dancing, King entered alone into the bed chamber, clothed the bridegroom and the bride with flaxen colored raiment, and brought them out into the gallery. Then they took the Gospel, which King expounded and explained.

After this they sat down at the table near by, and ate the wedding cake, &c., and then, embracing King, they went away. After their departure, while I was thinking of all I had seen and heard, King approached me and, all joy, said: "How is my soul rejoiced at this divine marriage! O, how much I desire to see you also in bed with some bride! Everything will I sacrifice for you; it seems to me that I should gain the world, if I could persuade you, and bring you into the right way." Then I remained silent; but, after a little, I asked whether the married couple have parents, what are their names, and if they know this. But he said to me: "The young man only has parents, but what are their names I cannot tell you, unless you take the oath." This we said, and I went away. But, as I went away, he begged me to come the next day, that I might be present at another of his mysteries, and with sweet words, and with a present of money, he sought to lead me astray; then I bid him good bye, without showing coldness, and went away.

The Mystery of Baptism.

The next day, which was the 15th of December, (27th, N. S.,) 1846, I went to his house, (for I had determined not to be absent a day, till I learned all his secrets,) at 2 o'clock, p. m. I found of the catechumens thirty sitting, and King standing and having in his hands the Gospel, and explaining it away according to his custom. Listening with attention to what was said by him, I took notes of it, and was silent till he ceased teaching.

The teaching having ceased, and the greater part having gone away, he approached me and ironically said to me "Why are you so thoughtful to-day? Has the beauty of some young damsel excited you?" Then I said to him in a fierce tone, "Be quiet and do not trouble me." Then he began to flatter me, until he had quieted me, amusing me with different kinds of conversation, till 4 o'clock, till I went away to my house.

At 9 o'clock in the evening, I went again to his house, at his request, and expected to see some other secret, as I had heard from the same. Twelve minutes passed, and behold there came sixteen young damsels of most beautiful countenance, of whom three appeared to be in the family way, and two young men; among them was also a little child, about six months old, which the mother held in her arms covered, and which King caressed. Then he took a bell and rung it, and all the proselytes assembled and sat down around the table, reading and praying. Then they arose, and embraced King three times. Then King knelt down and prayed. After the prayer he put on a white robe and girded himself with a leathern girdle; then he entered into the bed chamber on the right in his house, and brought out dry grass, which he scattered in his gallery; then entered a second time and brought out a baptismal font, hexagonal, encircled with leaves, and poured into it spirits of wine, then held to it a lighted candle, and let it burn till the flame ceased. Then he took the child from the arms of its mother and gave it to another young woman, and she to another, and so on till all had received it. The mother then bound it about the middle with a white ribband, after having taken off its clothes, and, kneeling down, gave it to King, saying, "Enlighten

the soul of the child." Then King took it, and embraced it, cut off a lock of its hair, which he gave to the mother, saying, "Burn it, and swear upon it, in the name of the great God, that you will bring up and teach this innocent child as I have taught thee." Then she took the lock and cast it into the fire that was near by, and swore thus, repeating after King, "I swear, in the name of the great God, whose power and wonderful works I have learned through the divine word, that I will deliver to this child all that I have been taught by the most pious King; that I will nourish it with the same divine doctrine with which I have been nourished; I will not permit it to enter into the temples of idols, nor worship the works of men's hands; I will not allow it to confess to erring priests, nor receive at their hands the bread and wine, which, they say, and will have, is the body and blood; finally, I will guard all thy precepts, and should I transgress in anything, may I be burned, as the lock of this child is burned, and may I be condemned to everlasting fire."

After the oath, King took a large vial, which was full of odoriferous spirits, which he poured around the baptismal font, and then lighted with fire; and he gave to the child to drink something sweet, and it immediately went to sleep. After this he put it in the baptismal font and prayed, saying, "Enlighten, O God, this child, that it may know the divine word, that it may worship Thee, the true God, and not creatures." This, he said four times, carrying the child five times swiftly around the baptismal font, and over the fire. Then he gave it to its mother, who stood and held it with respect and admiration. But King, kneeling down, lifted up his hands and bowed his head, and thanked God, saying, "I thank Thee, my God, that Thou hast heard me." Then immediately rising up, he took the child in his arms, kissed it on the mouth, and gave it to drink something which had the taste of lemonade, and anointing its head with a color like gold, and sweet scented, he rubbed the head of the child till it awaked. Then all the proselytes encircled him, and embraced the child, one by one. After this, the three women in the family way clothed it and gave it to its mother, embracing her also, once on her forehead, and four times on the bosom. Then they sat down around a table and feasted, after King had put off the holy garment, and afterwards they went away. After their departure, I went out of the gallery and thought. I decided to go away, taking leave of King in a cool manner; but King, observing my coolness, sought to bring me back, as if he wished to say something to me; but as I had already proceeded as far as the outer gate, I said to him, "Another time, for I am drowsy," and so I departed.

K. SIMONIDES.

It is hardly necessary to remark, that the whole is so gross, and bears so much upon the face of it, from beginning to end, the stamp of an abominable lie, that no intelligent reader can be supposed for a moment to believe it. Nor would it have been considered of any importance had it not been attended by consequences very serious to Mr. King, both on the part of the people and of the Greek government, which immediately on the appearance of the above article prohibited his preaching.

Mr. Marsh to Mr. Webster.

VIENNA, October 30, 1852.

SIR: To my report of August 21st, upon Dr. King's claim against the government of Greece, for depriving him of his right to the use and disposal of his lands at Athens, I attached a copy of a letter written by that gentleman to the minister of foreign affairs, soon after my arrival in Greece, and stated that no reply had been received at the time of the preparation of the report.

Dr. King has just forwarded me a copy of a note from the minister of foreign affairs to the directory of administrative police at Athens, which was officially communicated to him on the 2d (14th) October, 1852, and is probably to be regarded as the answer to his letter above referred to.

From this note, a translation of which I annex, it will be seen that the government appears no longer to insist on the pretence set up in a letter from the minister of the interior to the minister of foreign affairs, (annexed to the report and marked —;) that proper steps had been taken by the government to fix the amount and proportions of the liability of the neighboring proprietors and of the demus to contribution, and that the result had been communicated to Dr. King; and I am fully persuaded that the statement of the minister of the interior, to that effect, was absolutely without foundation.

The ambiguity with regard to the purpose for which the land was taken is still kept up, the word "square" applying as well to the square of the church of the Saviour as to the square of the people; and the ground, never before assumed by the government, that Dr. King ought to establish his claim against it judicially, is now formally taken.

I presume that the government has become satisfied that its objections to the validity of the claim are untenable, and that it has determined to shelter itself, hereafter, by referring the claimant to a tribunal upon which it knows it can rely, rather than by the repetition of arguments which are evidently fallacious, and the assertion of facts which have no foundation in truth.

The "persons expressly mentioned in articles 22, 23, and 24 of the royal ordinance of the 12th November, 1836," are simply "the demus and the neighbors," the former being liable for the central, the latter for the exterior, portions of the land taken for the *wide* streets and public squares; but the law points out no means whatever of determining who the "neighbors" are, and of course some preliminary steps must be taken by the government to fix the persons, and the amount which each is bound to contribute, before the claimant can have any legal remedy against them, even in cases where the ultimate liability rests clearly on them, and not on the government—which, however, is not admitted in this instance.

I have the honor to be, sir, your obedient servant,

GEORGE P. MARSH.

Hon. DANIEL WEBSTER,
Secretary of State.

[Translation.]

[No. 18,299.]

KINGDOM OF GREECE.

*The Ministry of the Interior to the Directory of Administrative Police
of Athens, &c.*

SIR: You are commanded to inform, in writing, Mr. King, a citizen of the United States of America, residing in this place, in answer to his petitions to the ministry of foreign affairs, that the government does not acknowledge itself responsible for an indemnification to him for the part of his lot of land, called Philadelphia, which, according to the approved plan of the city, is taken by the streets and a square, and that for this he must apply to the persons by law charged with this indemnification, who are expressly mentioned in articles 22, 23, and 24 of the royal ordinance of the 12th November, 1836, concerning the execution of the plan of the city of Athens; and, further, that if he thinks that he has any manner of right of claim against the government, he must substantiate the same in a judicial way, if he considers such claim legal.

The communication hereof, sir, you will make, observing strictly the legal forms.

The minister,

RIGAS PALAMIDES.

ATHENS, October 1, (13,) 1852.

A true copy:

P. J. GIANNAKOPULAS,

Clerk of the Directory of Administrative Police.

ATHENS, October 2, (14,) 1852.

Mr. Marsh to Mr. Webster.

[Extract.]

VIENNA, November 1, 1852.

SIR: *

The opinion of the twelve lawyers, which accompanied my despatch of October 9, having become publicly known at Athens, the gentlemen who subscribed it were assailed with great virulence by the Age, and some other papers, and they have thought it necessary to enter into a defence of themselves, by publishing an argument in support of the opinion they had expressed.

Dr. King has just forwarded me a paper containing this defence, and I enclose herewith a letter from Dr. King, and a translation, by myself, of the argumentative part of the article. It will be found somewhat important, as fully confirming the views I had expressed in regard to the legal character of the judgment of the court of correctional police, and the powers and duties of the court of areopagus.

The authorities, two, cited in the defence from French jurists, will be thought entitled to no small consideration, when it is remembered

that the areopagus, though corresponding in its general attributions to the higher English and American courts of judicature, is almost precisely analogous in its functions to the French court of cassation, the organization of the superior and inferior tribunals, as well as most of the forms of procedure, and of the provisions of the criminal law of Greece, having been taken, with little or no alteration, from the French codes.

The argument seems to me by no means destitute of ability, though the writer, perhaps, goes too far in admitting, that a conviction under the 17th article, could be sustained upon a general finding, that the respondent had made use of malevolent expressions, &c., without setting forth such expressions in certain.

I have no doubt whatever, that the conclusions of the writer, as to the general question, are adopted by almost the entire profession in Greece, and I believe they will be sanctioned by the unanimous voice of European jurists.

I have the honor to be, sir, your obedient servant,

GEORGE P. MARSH.

Hon. DANIEL WEBSTER,
Secretary of State.

Translation of the argument referred to in the accompanying letter of George P. Marsh, dated November 1, 1852.

The statute, which, according to the judgment of the court of correctional police, Jonas King has violated, says:

"Whosoever attacks by contemptuous mockery, or *malevolent expressions*, the dogmas, the ordinances and the customs of the oriental church, or of [any] other religion [or sect] existing with the consent of the government, is punished, &c."

The court of correctional police, in its conviction of Jonas King, resolved simply and unequivocally that Mr. King's bare heterodoxy, and denial of the dogmas of the oriental church, respecting the Mother of God, and the mystery of the communion, was a malevolent expression in attack of the dogmas of the oriental church.

Here is the adjudication of the court of correctional police on this point, in its own words:

"Whereas, from the things [above] briefly set forth, and their connection with one another, it sufficiently appeareth, and this court doth find that the respondent, Jonas King, in the years 1850 and 1851, at Athens, to wit, in public discourse and teaching, did attack by *malevolent expressions* the dogmas, the ordinances and the customs of the oriental church; and the calling of the Mother of God a mere woman, and [affirming] that she bare also other children, and that the communion, that is to say, the body and blood of our Lord Jesus Christ, is bread and wine, are indisputably *malevolent expressions*, &c."—(See the judgment of the court of correctional police, No. 704, A. D. 1852.)

The statute, in virtue of which the reversal of this judgment was moved, says; "if no punishable act appears, the areopagus, upon a motion for reversal, fully acquits the party convicted."

We ask, then, not the legal intelligence of the Age, and its prompters, but any man possessed of plain common sense, to tell us, whether the bare denial of the dogmas of the oriental church, uttered by one of heterodox sentiments, or, on the other hand, the bare denial of the dogmas of any other sect existing in Greece with the consent of the government, uttered by one of the orthodox faith, is a *malevolent expression*, and can possibly constitute the punishable offence of which Jonas King was convicted? Away with such blasphemy! for, if so, not only all heterodox Christians, all Mahometans, all Israelites, and in general all of heterodox belief, whose religion the Greek government tolerates, and does not forbid its external worship, but all we orthodox Christians, are exposed to criminal prosecution and actual conviction, for this reciprocal attacking of each others heterodox opinions, inasmuch as it is sufficient to prove, that we deny, each, the dogmas of the religion of the other, and this simple denial suffices to make us guilty of a *malevolent expression* against the religion of each other.

But the areopagus, they say, cannot interfere in the matters in pays of the prosecution. This is undeniable. Who has affirmed the contrary? Who has said to the areopagus—"examine the facts found by the judgment of the court of correctional police, and decide that Jonas King did not deny the dogmas of the oriental church respecting the Mother of God, and the mystery of the communion?" On the contrary, the council for the defence said to the areopagus, in conformity with the law, "Treat it as an admitted and settled fact, that Jonas King did deny the dogmas of the oriental church, as found by the judgment of the court of correctional police, and then, upon this admission, adjudge whether such denial constitutes a *malevolent expression*, and accordingly, whether the statute, the application whereof is the point in question, has been violated."

The areopagus then was not moved to enquire into the matters in pays involved in the case, but it was asked to determine upon the proper or erroneous application of the statute. Instead of doing this, however, it answers: "Whereas, the court of correctional police, weighing in its sovereign jurisdiction the facts established, held that said facts do constitute the defence provided against by the 17th article, the areopagus cannot interfere with the proof of such facts."

What facts? That the *denial of the dogmas* is or is not a *malevolent expression*! Is this a *fact*, or is it a *legal conclusion*, touching the construction, and right application of the statute? And why cannot the areopagus interfere with the establishment of this conclusion? Let us suppose for a moment that A. is charged before a criminal court with the crime of murder, and, having been found guilty, is sentenced to death for murder; the facts, upon which the indictment and the judgment are founded, being, that the respondent, with a view of satiating his malice against his enemy, who had already deceased, from some natural cause or malady, seeing the corpse of that enemy laid out, rushed upon it, sword in hand, and, by inflicting wounds upon the dead body, perpetrated the murder.

The reversal of this sentence is moved before the areopagus, and, as a ground of reversal, it is urged that this is not a punishable act. What think ye, ye judicial friends of the Age? In such a case, the ques-

tion being identical in principle with that involved in Dr. King's case, would the areopagus resort to the same reasoning?

"Whereas, the court below, weighing, in its sovereign jurisdiction, the facts established, ruled that said facts (that is to say, the inflicting of wounds upon the dead body) do constitute the crime of murder, provided against by the 288th article, the areopagus cannot interfere with the proof of said facts." That is to say, the areopagus cannot inquire whether the inflicting of wounds upon a dead body does constitute the crime of murder?

We have taken this strange and shocking example to show more clearly and forcibly the great absurdity of the reasoning of the areopagus, which amounts to a solemn recognition of the principle that the examination of the legal conclusions adopted by an inferior court upon facts found is not within its competence, so far as respects their accordance with the terms of the statute, in order to the application of the law. But perhaps those who are of the contrary opinion may say that the court of correctional police, weighing, in its sovereign jurisdiction, the facts found, that is to say, the denial of the dogmas of the oriental church uttered by Dr. King, resolved that such denial is a malevolent expression, constituting the offence provided against by the 17th article. But who can fairly deny that this resolution is not the finding of a fact, but merely a legal conclusion upon the facts, (the denial, namely, of the dogmas,) the adoption of which was necessary for the application of the law?

What answer ye to this, honorable teachers and prompters of the Age?

Observe the resolutions of the learned court of cassation of France as to the legal characterization of the facts found by the court below, sitting in pays.—Ledru Rollin, under the word *cassation*, (Mat. Crim.)

Article 465. Nevertheless it is the duty of the court of cassation to correct the false inferences and the erroneous conclusions drawn by criminal courts from the facts found by the judgment the reversal whereof is moved.—(Cass. 22d August, 1806, matter of Riva.)

Article 466. So, though a respondent is not allowed to deny before the court of cassation the existence or accuracy of the facts found by the judgment complained of, he is allowed to dispute in law the conclusions which the judgment draws from such facts.—(Cass. 23d November, 1827, matter of Ruault.)

Article 475. But we must nevertheless consider it settled, as matter of law, that the *character* ascribed, either by the council of inquest or by the correctional tribunals, to the facts complained of does fall within the jurisdiction of the supreme court.—(Cass. 2d April, 1825, matter of Rory; 7th February, 1833, Garnier's case; 5th June, 1841, vol. 1., 1852, p. 653, matter of Ritchen.)

Article 478. That the court of cassation may rule that an *assault* has been committed upon a magistrate by acts which the criminal court regarded as only an *insult* to him.—(Cass. April, 1826, matter of Rory; 29th May, 1813, Hudebert's case.)

Article 478. That a judgment declaring that such or such facts found do not constitute the offence of assault contemplated by the law may be reversed by the supreme court.—(Cass. 5th August, 1831, Roberti case.)

Had the court of correctional police, as is rightly admitted by the twelve lawyers, in their opinion, declared in its judgment that the denial of the doctrines of the oriental church was accompanied by malevolent expressions on the part of King, even though the same were not in certain set forth, the areopagus might well have said that it could not inquire into the proof of this fact, that is, the utterance of malevolent expressions, because such expressions, though not set forth, are matter of inquiry in pays, and such matter does not belong to the jurisdiction of that court. But as the court of correctional police, in the adjudicatory part of its judgment, specifically resolve that the "malevolent expressions" consisted barely and simply in the denial of the dogmas, it is indisputable that the areopagus, upon the principles we have urged, ought to have reversed the judgment, without any interference with the proof of the facts.

ONE OF THE TWELVE.

Mr. Marsh to Mr. Everett.

[Extract.]

FLORENCE, *March* 11, 1852.

SIR: On the 4th instant I received your despatch, No. 24, of February 4, 1853, and immediately communicated the substance of it to Commodore Stringham.

I have now to acknowledge the receipt of your letter of instructions, numbered 24, and dated February 5, 1853, which has this day been delivered me by Mr. Miles, special messenger of the department.

Commodore Stringham, who was at this city on the 9th instant, has returned to Spezzia; and I shall forthwith communicate to him that portion of the instructions which relates to my conveyance to Athens by one of the vessels of the squadron under his command.

I shall leave Florence for Leghorn to-morrow morning, and hold myself in readiness to embark for Athens on board the flag-ship, or such other vessel of the squadron as Commodore Stringham shall order to receive me, at such time and place as he shall designate for that purpose.

* * * * *

I have the honor to be, sir, your obedient servant,

GEORGE P. MARSH.

HON. EDWARD EVERETT,
Secretary of State.

Mr. Marsh to Mr. Everett.

[Extract.]

NAPLES, *March 31, 1853.*

SIR: On the 11th instant I had the honor to acknowledge the receipt of your letter of instructions, No. 24, and have now to report that, as Commodore Stringham was not able to furnish me an immediate conveyance to Athens, I proceeded to this port, and propose to await his arrival here with the flag-ship, when I shall forthwith embark for Greece.

* * * * *

I am, most respectfully, your obedient servant,

GEORGE P. MARSH.

Hon. EDWARD EVERETT,
Secretary of State.

Mr. Marsh to Mr. Marcy.

[Extract.]

ATHENS, *May 27, 1858.*

SIR: On the 31st of March, I informed the Department of State that I was waiting at Naples for the frigate Cumberland, on board of which I expected to proceed to this capital, and I have now the honor to report my subsequent proceedings.

The Cumberland did not arrive at Naples until the 16th of April, and I embarked on the 19th of that month, and landed at the Pirorus on the 29th. On Monday, May 2d, I called on Mr. Paicos, minister of foreign affairs, stated to him that I was instructed to put myself in communication with the government of Greece in relation to the difficulties between the Greek authorities and Dr. King, and asked to be presented to the king, in such form as the usages of the Greek court prescribe in like cases.

As I was not provided with letters of credence to his majesty, or to any department of the ministry, or with any testimonial whatever of my official character and powers, Mr. Paicos was of opinion that I was entitled to be presented only as a private individual; but as I thought the form of my presentation might be of some importance in reference to the question of my recognition by the department of foreign affairs as an authorized agent of the American government, I waived an audience for the time being.

I arrived at Athens during the festivities of the Greek Easter; and, as the custom-house was closed until their expiration, on Wednesday, the 4th of May, and some other objections were made by the collector to the passing of my baggage, I did not succeed in getting the trunk which contained the papers relating to Dr. King's case, until Thursday, the 5th of May, and was consequently unable to complete the preparation of notes to the minister of foreign affairs until Monday, May 9.

On that day, having now prepared a communication upon the subject of the criminal trial, I addressed to Mr. Paicos a note—a copy of which is annexed and marked A.

On Thursday, the 12th instant, Mr. Paicos called at my lodgings and made particular and formal inquiries in respect to my credentials or other authorization. I stated to him, as I had, in substance, done before, that I was without testimonials of any kind; but I offered to communicate to him a letter from Mr. Everett, late Secretary of State, to myself, numbered 24, and dated February 4, 1853, announcing the preparation of instructions to me to repair to Athens and enter into communication with the government of Greece upon the subject above referred to. The minister said I might have a presentation through the marshal of the palace, upon my own application, or that of the acting American consul, and that afterwards I could communicate the secretary's letter.

Conceiving that under these circumstances I could not properly insist upon a more formal audience, and being satisfied that an attempt to do so would lead to a refusal on the part of the government to recognize me as in any manner a diplomatic agent, or to receive any official communication from me, I applied to the marshal for an audience by a note in substantially the same form as that before addressed to the minister of foreign affairs, and on Friday, the 13th of May, I was presented to the king, in what, I suppose, must be considered as an unofficial way.

On the same evening, I sent to the minister of foreign affairs, by the hands of Lieutenant Wise, of the navy, the communication I had prepared on the subject of the criminal prosecution of Dr. King, with Mr. Secretary Everett's letter of February 4th, and a note, a copy of which is annexed and marked B, all which Mr. Paicos received without objection. On the 17th of May, I sent to the minister of foreign affairs, through the same channel, a communication respecting Dr. King's claim to damages for the obstruction of his proprietary rights to the disposal of certain lands, and on delivering this note, Lieutenant Wise was informed by Mr. Paicos that an answer to my first communication would be given in a day or two.

I have hitherto received no reply to either note, nor, indeed, in cases requiring so extended an examination of questions of both law and fact, should I have expected answers so soon, had not Mr. Paicos said to Mr. Wise that an early reply to my first communication would be given.

My notes being both necessarily somewhat voluminous, I do not annex copies of them to this dispatch, but shall forward them by the first convenient opportunity.

The question of my right to expect a recognition as a diplomatic agent, without formal credentials or testimonials of any sort, was an embarrassing one; and though I think the reception of my notes by the minister of foreign affairs without objection on that score, must, under the circumstances, be considered as concluding the government, yet I am by no means confident that further difficulties may not be raised on this point.

Well-informed persons at Athens suppose that, in reference to the

criminal case, the action of the Greek government will be greatly influenced, if not absolutely guided, by the advice of the representatives of the principal continental powers at this court. What that advice may be is matter of mere conjecture; but I believe that both it and the course of the government of Greece will depend much more upon what the king and his advisers, native and foreign, may suppose to be the attitude and purposes of the American government in reference to the subject, than upon their views of the legal or moral right of the case.

The little that has transpired from persons supposed to be best acquainted with the views of the government of Greece, does not encourage the hope of a favorable answer to my note, and I am persuaded that if the reply of the minister of foreign affairs shall be in the negative, it will be because the language of my instructions, which I have followed in my communication to him on this subject, is not considered as amounting to a peremptory demand of a remission of the sentence of banishment.

* * * * *

I have the honor to be, sir, with the highest respect, your obedient servant,

GEORGE P. MARSH.

Hon. WILLIAM L. MARCY,
Secretary of State.

—
A.

Note to Mr. Paicos, Minister of Foreign Affairs.

ATHENS, May 9, 1853.

The undersigned, minister resident of the United States of America near the Ottoman Porte, specially commissioned by the President of the United States to communicate with the government of his majesty the king of Greece, in reference to certain difficulties between the authorities of Greece and the Reverend Jonas King, an American citizen resident at Athens, has the honor to inform the minister of foreign affairs that he is prepared to make to him a communication on one of the subjects embraced in his instructions.

Before, however, dispatching his note, he deems it proper, in conformity with diplomatic usage, to ask a presentation to his majesty the king of Greece, in such form as the custom of this court, in the like cases, prescribe.

For the better understanding of his position at this court, the undersigned here repeats what he had the honor verbally to state on that subject in an interview with his excellency the minister of foreign affairs on the second of the present month.

The undersigned is not commissioned as minister to the court of Athens, nor has he formal credentials to present, and therefore, as was observed on the occasion above referred to, he does not lay claim to the precise technical position of an accredited minister, but his instruc-

tions impose upon him duties of a diplomatic character, and his presentation should therefore be in a form appropriate to his position.

The undersigned accordingly requests to be presented to his majesty, in such form as the usages of this court under the like circumstances require, at such time as his majesty shall be pleased to command, and, if permitted, will be attended on that occasion by the commander in chief of the United States naval forces in the Mediterranean, and the officers of his suite.

The undersigned avails himself of this occasion to tender to the minister of foreign affairs the assurance of his most distinguished consideration.

GEORGE P. MARSH.

His Excellency A. PAICOS,
Minister of Foreign Affairs.

B.

Note to Mr. Paicos, Minister of Foreign Affairs.

ATHENS, May 13, 1853.

The undersigned, minister resident of the United States of America near the Ottoman Porte, charged with a special mission to the government of his Hellenic majesty, has the honor to transmit herewith to his excellency the minister of foreign affairs a note upon one of the two subjects in reference to which he is instructed to communicate with the government of Greece.

He encloses also the original letter from the Secretary of State of the United States to himself, announcing the preparation of instructions to the undersigned, and which is the same letter mentioned by the undersigned in a recent interview with the minister of foreign affairs.

The instructions referred to therein have been received, and it is in pursuance of them that the undersigned has prepared the accompanying communication.

The undersigned flatters himself that the great moderation of the views of the President of the United States in the present instance will ensure the ready acquiescence of the government of his Hellenic majesty, and prays his excellency the minister of foreign affairs to accept the renewed assurance of his most distinguished consideration.

GEORGE P. MARSH.

His Excellency, A. PAICOS,
Minister of Foreign Affairs.

Mr. Marsh to Mr. Marcy.

ATHENS, June 2, 1853.

SIR: On the 27th of May I had the honor to report to you my arrival at this capital, and my proceedings under my special instructions up to that date.

I transmit, herewith, copies of a letter, which, in pursuance of a suggestion to that effect in my instructions of May 5, 1853, I addressed to Dr. King immediately on my arrival, and of his reply.

I am not aware of the existence of any facts inconsistent with Dr. King's statement, and as, moreover, the sentence of banishment against him assumes, as a necessary condition of its legal validity, (as will be seen by referring to my original report,) that he is an alien, I suppose his right to be still regarded as an American citizen may be considered indisputable, and, indeed, it has never been disputed by the authorities of Greece.

I transmit, also, copies of my two notes to the minister of foreign affairs respecting the criminal prosecution of Dr. King, and his claim against the government of Greece, for damages for the injunction laid upon his land.

I do not annex copies of the documents accompanying the latter communication, because they have been already furnished to the Department of State, in connection with my report on the same subject, and may, of course, be readily referred to.

On Tuesday, May 31, I had an interview with Mr. Paicos, minister of foreign affairs; Mr. Paicos began the conversation by complaining of the decided position taken by the American government, and of the tone and language of my communications, which he thought not in harmony with the moderation professed by me in behalf of the President of the United States, and which he said had produced a disagreeable impression upon the government of Greece.

He professed to believe, that the judgment of the courts in the criminal case was sustainable in law, though for the present he waived the discussion of that question, and he insisted that the President ought to have referred Dr. King to the Greek courts of law for redress in the matter of the land.

This point he argued at some length, and maintained, that in all cases of suits against the Greek government the courts had shown themselves independent and worthy of confidence.

In proof of this he cited three cases, and referred to a fourth, where judgment had been given against the public, or the King, as a private person.

In the whole discussion, however, he evaded, or misunderstood the real grounds, both general and special, on which I suppose the President to have acted in declining to require the claimant to seek relief at the hands of the Greek tribunals.

In conclusion, he said that Dr. King should receive an indemnification for his land, and that the government was now making inquiries respecting its value, and promised to make written replies to both my communications in the course of a week.

I forbear to detail the arguments of the minister, because they will doubtless be more fully developed in his answers to my notes.

I shall consider myself extremely fortunate if I receive those answers within the time limited by Mr. Paicos. Evasion and procrastination are the cardinal features of Greek diplomacy; and the European powers have indirectly encouraged this habit of the Greek court by submitting, in all their negotiations with it, to delays and tergiversa-

tions which would not be tolerated in their intercourse with each other. I trust, however, that the presence of so many American ships of war here, and in the vicinity of the Greek coast, will have a salutary effect in hastening the action of the Greek ministry, and that my next dispatch will announce the fulfilment of the duties committed to me at Athens.

As to the tone and temper of my notes to the minister of foreign affairs, it is for my own government to judge whether they are or are not suitable to the occasion. I have endeavored to conform to the letter of my instructions, in abstaining from menace, on the one hand, and on the other, in letting the government of Greece see that the President was quite in earnest. At any rate, the language of the notes is warranted by truth and justice, and I am confident that a milder and less decided tone would utterly have failed to accomplish the object for which I was sent hither.

Although inquiries into the political condition and prospects of Greece are not embraced in my instructions, yet, as my residence in the Levant, and more especially the investigations in which I have been engaged at this capital, have, in some degree, familiarized me with the character, policy, and ultimate political aims of the government and people of Greece, I have hoped it would not be deemed impertinent in me to submit to the government of the United States some observations on the subject; I have accordingly prepared a paper with that view, and shall transmit it to the Department of State, as soon as it can be fairly copied.

For the reasons given in my second dispatch of May 27, I requested Commodore Stringham to proceed to the Bosphorus with the flag-ship of the squadron, and he sailed for Constantinople on Monday, the 30th of May. The *Levant* is now here, and the *St. Louis* is daily expected.

I have the honor to be, sir, with the highest respect, your obedient servant,

GEORGE P. MARSH.

HON. WILLIAM L. MARCY,
Secretary of State.

Mr. Marsh to Dr. King.

ATHENS, *April* 30, 1853.

SIR: I have been instructed to repair to Athens, and to lay before the Greek government the views of the President of the United States in relation to your difficulties with the authorities of Greece, but as my instructions call my attention particularly to the preliminary question of your right to be regarded as still a citizen of the United States, I deem it necessary to address you some inquiries on that subject, before putting myself in communication with the minister of foreign affairs.

The best method of stating the questions to which I desire an answer will, perhaps, be to give you the following extract from the letter of the Secretary of State.

“Before closing this dispatch, I think it expedient for greater caution

to call your attention to that part of your instructions of the 29th of April, 1852, which relates to the citizenship of Dr. King.

"Those instructions were given in the understanding that he has never relinquished, nor intended to relinquish, his character as an American citizen; that though married, and for many years a resident in Greece, he has never abandoned the intention of coming home; that he has never renounced, nor intended to renounce, his allegiance to the United States, nor taken any steps towards becoming a citizen of Greece.

"That such is the case is inferred from the correspondence of Dr. King and the missionary society by whom he has been employed with this department; and it is on this assumption that the President has felt it his duty to interfere in his behalf."

I now beg, sir, that you will give me early, full, and explicit information on all the points of inquiry suggested in the foregoing extract, and am,

Very respectfully, your obedient servant,

G. P. MARSH.

Dr. JONAS KING, *Athens*.

Dr. King to Mr. Marsh.

ATHENS, May 2, 1853.

SIR: In reply to your communication of the 30th ultimo, I have the pleasure to inform you that I have never relinquished, or intended to relinquish, my character as an American citizen, nor abandoned the intention of going home, nor have I ever renounced, or intended to renounce, my allegiance to the United States, nor taken any steps towards becoming a citizen of Greece.

Yours, with the highest respect,

JONAS KING.

Hon. G. P. MARSH, *U. S. Minister Resident*.

Mr. Marsh to Mr. Paicos.

ATHENS, May 17, 1853.

The undersigned, minister resident of the United States of America near the Ottoman Porte, specially commissioned by the President of the United States to enter into communication with the government of his majesty the king of Greece, in relation to the subject herein discussed, has the honor to transmit to the minister of foreign affairs the following statement respecting the claims of the Reverend Jonas King, an American citizen, resident at Athens, upon the government of Greece, for an obstruction to his rights to the use, enjoyment, and control of certain lands owned by him in the city of Athens, and of the conclusions of the President of the United States thereon.

In the years 1830 and 1831, Dr. King purchased two contiguous parcels of ground lying at the present northern terminus of Athena

street in the city of Athens, and containing together nearly eleven thousand square common peeks of land. Some small additions were afterwards made to these purchases, and the property, whose boundaries are indicated by a substantial stone wall, is generally known by the name of Philadelphia.

In 1834 the removal of the seat of government from Nauplia to Athens was decreed, and a plan for laying out the city proposed by Messrs. Cleanthes and Schaubert was adopted. This plan was soon superseded by another proposed by Klenze, which is said to have been also sanctioned by royal authority, though neither the ordinance adopting it, nor the plan itself, appears ever to have been published.

By both these plans it was proposed to take a considerable portion of Dr. King's land for a street and public square, but the street and square were never opened, set out, marked, or in any way indicated by visible monuments, nor was any survey or description of the same ever communicated to Dr. King, made public, or, so far as is known, ever drawn up.

On the 28th of January, (9th of February,) 1835, Dr. King having heard that it was intended to devote a portion of his property to public use, addressed to the minister of the interior a request for indemnification, a copy of which is annexed and marked A, (E, in report to State Department.) To this letter no written reply was returned, but verbal assurances of indemnification were given by the minister.

Dr. King soon after opened ditches around his land to mark its limits, and on the 1st, (13th,) September, 1835, he received from the head of the police a notice, a copy of which is hereto annexed and marked B.

The ditches were filled up under the direction of the head of the police, but the intention of laying out the square of the people, referred to in the notice, was never carried into effect.

On the 16th, (28th,) January, 1837, Dr. King addressed to the demarchy of Athens two notes, copies of which are annexed and marked respectively C and D, (H and I, in report.) To these no written reply was made; but Dr. King was orally informed by the demotic authorities that nothing would be done under the proclamation referred to in note D, and the same, in fact, appears to have remained a dead letter, as well with respect to other persons interested as to Dr. King.

The proclamation referred to was dated January 7, 1837, and numbered 2,339.

On the 14th, (26th,) June, 1837, Dr. King addressed to the president of the council of ministers a letter, a copy of which is annexed and marked E, (K, in report.)

On the 23d June, 1837, the secretary of state for the home department made to his majesty the king a report, a copy of which, marked F, (L, in report,) is hereto annexed, which report, together with a royal order thereon, dated 26th June, (8th July,) 1837, hereto annexed and marked G, (M, in report,) was communicated to Dr. King on the 30th June, (12th July,) 1837, together with a letter from the secretary of state of that date, a copy whereof is annexed and marked H, (N, in report.)

Dr. King hereupon applied to the authorities for payment of an indemnification, which was refused; and upon resorting to the architect

for information respecting the boundaries of the street and square, and other arrangements for opening the same, he could obtain none, and some time after was told by him that it had been determined to occupy his ground as a site for the great national monumental church of the Saviour, the erection of which had been decreed by royal ordinance in 1834, which ordinance was revived and affirmed by royal decree on the 3d, (15th,) April, 1838.

At what period it was determined to erect this church upon Dr. King's land does not appear, no formal notice ever having been given him; but as the ordinance of 3d, (15th,) April, 1838, declares, that the site had been already selected, and as no other reason is known for the abandonment of the plan of opening Athena street and the square of the people, expressed in the notice from the head of the police of 1st, (13th,) September, 1835, it is conjectured that it was at that time decided to appropriate the land to this purpose. But this point is immaterial, as it only affects the question of the period from which Dr. King is entitled to claim interest.

On the 31st of August, (12th of September,) 1838, Dr. King applied to the secretary of the home department for information respecting the appropriation of his land to public use, by a letter, a copy of which, marked I, is hereto annexed, (P, in report,) but no notice was taken of this communication.

He now made various oral applications for compensation for his land, or leave to build thereon, and was told by the public authorities, from time to time, that the government was about to adopt a general plan for the relief of all persons whose lands had been taken for the public use. Nothing, however, being done in the premises, he began in January, 1841, to make preparations to cultivate his land. The head of the police, probably supposing that he was about to build, immediately interfered and served upon him an injunction, dated January 21st, 1841, hereto annexed and marked J, (Q, in report,) and to this he replied by two notes, dated respectively February 3d, (15th,) and February 10th, (22d,) 1841, copies of which are annexed and marked K and L, (R and S, in report.)

The new plan referred to by the head of the police does not appear to have been published, nor was Dr. King ever informed in what way it affected his estate.

Six years having now been lost in fruitless efforts to procure a release of the injunctions which, by the successive adoption and rejection of four different plans, had been laid upon his property, or to obtain a compensation for the loss of it, Dr. King applied to Mr. Perdiccaris, American consul at Athens, the only representative of the United States in Greece, to interfere in his behalf. Mr. Perdiccaris addressed to the ministry repeated communications on the subject, but no notice appears to have been taken of any of them.

On the 22d May, (3d June,) 1844, the claimant by a note, a copy of which is annexed and marked M, (T, in report,) applied to the demarch of Athens for leave to enclose a portion of ground belonging to his original purchase, but not included in a fence, with which he had enclosed the residue as early as 1851, and received a reply, a copy of which is annexed and marked N, (U, in report.)

On the same day he addressed to the secretary of state for the home department a note, a copy of which is annexed and marked O, (V, in report.)

The secretary replied on the 1st, (13th,) of June, 1844, by note, annexed and marked P, (W, in report.)

Upon the expiration of the period limited in this note, without the payment of any indemnification, Dr. King enclosed the remainder of his lot, and at various times afterwards, as well as at earlier periods, made preparations to build thereon; but being as often forbidden by the police to erect buildings on the same, he made a formal application to the police for permission to erect a temporary structure upon his ground, which was granted, upon his entering into a written stipulation that he would not claim damages for the *building* when the land should be occupied for public purposes.

Of this paper a copy is annexed and marked Q, (X, in report.)

There was also another application and permission, on the same conditions, in 1850.

On the 12th of November, 1850, Mr. Diomatari, American consul at Athens, presented Dr. King's claims to the proper department of the government of Greece, and a correspondence ensued between him and the ministry, which it is not necessary here to recapitulate, and it suffices to state that, so far as is known to Dr. King, none of the steps referred to by the ministry, for fixing the limits of the land taken and left, for arranging the *temachia* conformably to the law, for settling the proportions of the indemnification to be paid, respectively, by the *demus* and the neighboring proprietors, or for securing payment to the present claimant, were ever taken. It is true, that occasional general orders to make compensation may have been issued to the *demus* by the government, but all such were disregarded by the municipality, on the ground, as is understood, that no measures had been taken by government to fix the liability of the *demus* by opening the street or square; and, further, that the supreme government, by selecting the ground as the site of a national edifice, had appropriated it to a national use, and that, consequently, the national treasury ought to make compensation for it.

The undersigned now proceeds to state the conclusions of the President of the United States upon the foregoing facts, and the law thereto applicable.

In reference to the ground of the exclusive responsibility of the *demus* for the indemnification, sometimes assumed by the ministry, it is considered that the *demus* does not appear to be under any liabilities to indemnification but such as are imposed by the ordinance of the 12th of November, 1836, which creates an obligation on the part of the *demus* to indemnify landed proprietors damaged by the opening of streets or squares upon their property. It is plain that this liability cannot attach until the street or square be actually opened, or at least until the limits be precisely ascertained by the proper authorities, and publicly and clearly designated, the proportion of the compensation to be paid by the *demus* and the neighboring proprietors fixed and promulgated, and the throwing open of the street or square formally decreed. All these acts (for the *demus*, without the special and express

orders of the supreme government, cannot lay out a street or square in the city of Athens) must be the acts of the officers of the crown, and it is obvious that the benefits, in consideration of which the liability in question is imposed, do not accrue until the street or square is actually opened, or legally ready to be opened, for public use.

There is no pretence that these conditions have been fulfilled in respect to the land in question, and, of course, no obligation to indemnify the claimant has ever devolved upon the demus.

But there are other sufficient reasons for the opinion that the demus is under no liability to the present claimant. His rights to the use of his property were obstructed, and a forcible entry made upon it by the supreme government, in September, 1835—more than a full year before the ordinance, whereby alone the demus became liable, was promulgated. Upon this obstruction and seizure to public use, a claim forthwith accrued against the government, by whose authority it was committed, and no subsequent legislation could exonerate the government and shift the burden to the shoulders of a municipal body, which, moreover, so far as this subject is concerned, is even not an independent corporation, but a mere agent of the supreme authority.

The President of the United States finds an equally satisfactory argument in the fact that the land was decreed to be occupied, not for the municipal uses contemplated by the ordinance of 1836, but for a strictly national purpose—the erection, namely, of a great national religious and monumental temple, an object in which the demus of Athens had no more legal interest than any other demus in Greece, and in respect of which the law imposed upon it no duties.

The case, in fact, presents the same question as that of Mary Raftopoulos, the history of which is familiar to the minister of foreign affairs, and in all essential circumstances is identical with it. The land of Mary Raftopoulos, lying adjacent or near to that of Dr. King, was embraced in the grounds selected by the architect as a site for the church in question, and though, upon suit brought by her against the public, it was contended by the counsel for the crown, as it now is by the ministry, that the demus ought to indemnify the claimant, yet in 1844 the areopagus, upon solemn argument, decided that no liability attached to the demus, both because the street and square had never been opened, and because the government had declared its intention to appropriate the land to a use with which the demus had no concern, and, accordingly, the government was adjudged liable for the value of the lands.

The Greek government has itself repeatedly admitted that Dr. King is entitled to compensation, but, for the reasons above stated, the President regards as wholly inadmissible the ground taken by the ministry, that the claimant must look to the demus alone for that compensation.

It is the supreme government which has obstructed the proprietary rights of Dr. King; and, if it has not yet actually occupied his lands for a national use, it has declared its intention so to do, while, without in any way devoting it to the municipal purposes, in view of which alone the land imposes an obligation on the demus, it has, at the same time, for a period of eighteen years, deprived the owner of all profitable use of his property.

It is, then, the general government by whose acts the claimant has

been damnified, and it is the general government alone that the President of the United States holds responsible.

With a view of saving time and useless discussion, the undersigned proceeds to anticipate an objection that has been suggested, and may again be raised by the ministry. He refers to the position taken in order 18,299, of the 2d (14th) October, 1832, from the minister of the interior to the directory of the administrative police, that the claimant must establish his rights against the government "in a judicial way." It is unnecessary to discuss the question how far the rule of public law here invoked might bind the claimant under other circumstances, as its application in the present case cannot properly be demanded by the Greek government, and will not be allowed by the President of the United States.

The precise question at issue has been already decided, and no doubt very properly, by the highest Greek court, in the case of Mary Raftopoulos above noticed, and it would, therefore, be an idle waste of time to seek a re-examination of the question before a tribunal which could only affirm the principle, and which possesses no means of enforcing its judgment against the government. And it is further to be remarked, that the Greek government itself has never, until after it was informed that the claimant had appealed to his own to interpose in his behalf, and that the President of the United States had ordered an investigation respecting it, placed its refusal to indemnify him, on the ground that his claim had not been duly adjudicated by the tribunals, but has positively disclaimed all responsibility, and attempted to turn him over to the municipality of the city of Athens, by which, in turn, he is thrown back upon the general government.

But the undersigned finds himself under the disagreeable necessity of urging another and more decisive reply to the objection under consideration.

The rule supposes that the legal tribunals, having jurisdiction of the subject matter of the claim, and of the parties interested, are entitled to confidence, but the undersigned is instructed to say, that inasmuch as the conduct of the courts of Greece, in the criminal trial of Dr. King, has sufficiently shown that he cannot expect justice at their hands, the President of the United States can place no confidence in those tribunals, in any case where the present claimant is concerned.

It is therefore the duty of the undersigned to inform the minister of foreign affairs, that neither the question of the liability of the Greek government, nor that of the value of the land, nor any other growing out of the transactions above recited, will be submitted to the legal tribunals of Greece; and that he is instructed by the President of the United States formally to demand the payment, by the government of Greece, of a reasonable indemnification to Dr. King, for the injuries he has sustained by the acts above set forth.

In fixing the damages to be paid, there are various rules of estimation which might be adopted. In cases of wrongful deprivation of property, the highest market value of the same, at any period subsequent to the deprivation, with interest thereon to the time of payment, is often resorted to as a measure of damages, and had Dr. King been permitted to occupy his ground with tenantable buildings, the high rate

of rent at Athens gives reason to believe, that he might have realized even a larger sum than the compensation which that rule would award him.

It would, in strictness, be no act of injustice if the President of the United States should insist upon indemnification to the claimant, at the highest of these rates.

But the President, desiring to testify his friendship for the government of Greece, as well as his regard for the principles of equity, by the great moderation of his demand, has instructed the undersigned to adopt much more favorable principles of estimation, and the undersigned will be happy to avail himself of the liberal spirit of his instructions, by agreeing at once to the lowest amount within the limits of the discretion allowed him, which his excellency the minister of foreign affairs may think proper to propose.

The undersigned renews to the minister of foreign affairs the assurance of his distinguished consideration.

GEORGE P. MARSH.

His Excellency A. PAICOS,
Minister of Foreign Affairs.

Mr. Marsh to Mr. Paicos.

ATHENS, May 13, 1853.

In a private interview with his excellency the minister of foreign affairs, in the month of August last, the undersigned, minister resident of the United States of America near the Ottoman Porte, had the honor to state that he had been commissioned by the President of the United States of America to repair to Athens, inquire into certain difficulties between the authorities of Greece and the Rev. Jonas King, a citizen of the United States, long resident at Athens, and report to his government thereon.

Having fulfilled this commission, the undersigned has been instructed by the President of the United States to return to this capital, and to present to the government of his majesty, the king of Greece, the views of the American government in relation to the difficulties in question, and this duty he now proceeds to discharge.

The questions at issue embrace two distinct and independent subjects; the one a criminal prosecution and conviction of Dr. King for an alleged violation of the laws of Greece, the other a claim on his part for an alleged obstruction by the Greek government of his rights to the use, enjoyment, and disposal of certain lands owned by him in the city of Athens.

For reasons of convenience, the undersigned will, in this note, confine himself to the matter first above mentioned, the criminal prosecution namely, and will make the other question the subject of a future communication.

It will be remembered that the original criminal charge against Dr. King was a violation of the 17th and 18th articles of the law concerning reviling in general, and the press.

The act of accusation embraced a variety of distinct specifications under the charge, all consisting in the public oral preaching of certain religious doctrines, more or less at variance with the faith of the oriental church, by which preaching, as the act of accusation concludes, "he assailed, in public discourse, with contemptuous mockery and malevolent expressions, the dogmas, the ordinances, and the customs of the oriental church, and uttered opinions and sentiments repugnant in general to its fundamental principles, and of pernicious influence, contrary to the form, force, and effect of the 17th and 18th articles of the law concerning reviling, &c."

It will be noticed that the act of accusation does not charge Dr. King with disseminating his heterodox opinions, or assailing the oriental church, by writing, printing, or in any other manner than by the public preaching of obnoxious doctrines; and this is a point of some importance, because in spite of the remonstrances of the counsel for the defence, the attorney general, as will hereafter appear, was improperly permitted by the court of correctional police, after the testimony was closed, and in the course of his argument, to read and comment upon, as evidence of the guilt of the respondent, certain printed books, the publication of which was not charged in the act of accusation, nor proved in the trial against him.

By the 17th article of the law concerning reviling, &c., "whoever in public discourse, in writing, or by symbolical representations, assails with contemptuous mockery or malevolent expressions the dogmas, the ordinances, or the customs of the oriental church, or other religion existing with the assent of the government," is liable to imprisonment; and by the 18th article of the same law, "whoever expresses such principles, opinions, or sentiments as are repugnant in general to the fundamental grounds of religion and morality, or are otherwise prejudicial to religion and morals," is punishable in the same manner.

The act of accusation does not follow the phraseology of this last section, nor does it charge the respondent with uttering "principles, opinions, or sentiments repugnant *in general* to the fundamental principles of religion and morality," but with expressing "opinions and sentiments repugnant to the fundamental principles of the oriental church, and of pernicious influence."

The 18th article of the law in question was evidently not intended specially for the protection of the oriental church, but for that of those fundamental principles of religion which are common to all Christian sects, and the offence charged by the act of accusation under this article, is certainly no violation of its letter or of its spirit.

As regards the final result of Dr. King's trial, the point is indeed unimportant, because the areopagus reversed the judgment against him, so far as concerns the application of this article, but like many other circumstances of the trial, his conviction by the court of correctional police, under this article, is of consequence, in a general view of the case, as exemplifying the pervading disregard of law and justice which throughout characterised the conduct of the court.

The council of the court of appeals upon an appeal from the allowance of the act of accusation by the council of the court of correctional police, affirmed the act, but the areopagus, before which tribunal the

question was now carried, reversed the decision of the court of appeals, so far as concerned the application of the 18th article of the law, and, in effect, ordered the act of accusation to be amended by striking out so much of it as charged the respondent with a violation of the article, and sent him down for trial at the bar of the court of correctional police, on the charge of a violation of the 17th article only.

The court of correctional police found the respondent guilty, not only of an infraction of the 17th article, but in defiance of the solemn decision of the areopagus, and in spite of the manifest illegality of such a proceeding; also of a violation of the 18th article, and this upon the pretence that additional evidence to warrant the conviction under that article was adduced at the trial, when in point of fact no new testimony applicable to such a charge was elicited at the bar.

The respondent was now sentenced by the court to fifteen days' imprisonment, and, by virtue of articles 34 and 37 of the penal code, to banishment from the realm of Greece as an alien, "in behaviour and conduct pre-eminently dangerous to morals."

The evidence against the respondent was in general of a suspicious character. Much of it was mere hearsay, and the rest was mainly the testimony of ignorant men, and heated and inexperienced youths, some of whom had notoriously been among the most active agents in fomenting the popular excitement and stimulating the prosecution against him, and by their own confession had feigned proselytism to his views, for the obvious purpose of entrapping him into unguarded language; and there was a good deal of evidence in rebuttal, of a character at least as credible and respectable as that on the part of the prosecution. The court of correctional police evidently felt the testimony to be insufficient to warrant the condemnation of the respondent, and deemed it necessary to justify its sentence to public opinion, by embodying in its recital of the grounds of conviction the expression of several obnoxious sentiments by the respondent, of the utterance of which by him not a shadow of proof is to be found in the testimony. The recital contains absolutely no evidence tending to show that Dr. King had ever accompanied the expression of any of the sentiments ascribed to him in the recitatory part of the judgment with the language of mockery, opprobrium, or malevolence towards the doctrines of the Greek church, or those who profess them; and the finding of the court that he applied the epithet "foolish" to those who held certain doctrines, and that he called the worship of images idolatry, was either borrowed from the argument of the attorney general, or was, more probably, a pure invention of the court, unsupported by a particle of proof, and manifestly introduced into the record for the purpose of giving color to the unjust and illegal judgment about to be pronounced. At the same time the court did not venture to rest the condemnation of Dr. King upon these pretended facts, as its legal grounds, because it would be seen at once that it was not borne out by the testimony, but it selects two other independent facts on which to base its judgment, and which alone are to be regarded as its legal foundation, the rest being mere matter in aggravation. These are—

First, the "calling of the Mother of God simply a woman, and affirming that she bare also other children;" and second, teaching "that the

communion, that is, the body and blood of our Lord Jesus Christ, is bread and wine."

The court proceeds solemnly to adjudge, as matter of law, and as the ground of conviction, that the public utterance of these opinions, in a sermon, by a clergyman of a denomination which maintains them, even though unaccompanied with the language of contempt, malice, or insult, or with any express reference to the doctrines of the oriental church, (for no such are alleged by the act of accusation, proved by the witnesses, or pretended by the court to have been used by the respondent in connection with the expression of these opinions,) is, in and of itself, a malevolent act, and does in law constitute the offence of "attacking, by malevolent expressions, the dogmas, the ordinances, and the customs of the oriental church," contrary to the form, force, and effect of the 17th article of the law concerning reviling and the press.

In regard to the two facts thus made the gist of the offence, it is worthy of notice, as a further exemplification of the spirit of the court, though otherwise comparatively unimportant, that the only direct evidence to prove that Dr. King ever expressed the first of these obnoxious sentiments is the testimony of the boy Demakes, who states that the respondent, not in public discourse, but in *private* conversation, and in reply to a question by the witness, declared the opinion in question; as to the other fact, the affirmation that the body and blood of Christ are bread and wine, it is a matter scarcely charged in the act of accusation with such legal certainty as to be a sufficient ground of conviction, had it even been a criminal act.

Upon the trial at the bar, the able counsel for the defence, besides a general denial of the criminal charge, introduced several witnesses, whose testimony, though negative, tended in some degree to disprove the general truth of the allegations of the act of accusation, and they relied upon the first article of the constitution of 1844, which provides for the toleration of "every known religion," and guaranties the protection of the law to the worship (including, of course, preaching in the case of those sects with which preaching is regularly a part of divine service) of all alike; the tenth article, which declares that "every one may publish orally, or in writing, and by the press, his thoughts, (sentiments or opinions,) observing the laws of the State;" and the one hundred and third article, which annuls all laws and ordinances repugnant to the constitution.

They further insisted that the plain intent and meaning of the law, which was unquestionably designed to protect, not to restrain religious liberty, was to make punishable, not the mere public expression of religious opinions, in a country where all religious sects, Mohammedans and Jews not excepted, enjoy, by law, equal freedom of opinion and of speech, but the disturbance of the public peace by violent and malignant attacks upon opposing creeds, and that, consequently, malice was a necessary ingredient of the crime, and a fact essential to be proved. This view of the case is strongly supported by the phraseology of the law of 1822 of the French code, from which the Greek law is, in substance, borrowed, and particularly by that of the German text, published by authority in 1834, (and which is understood to be in fact the original, the Greek being but a translation,) where the phrase

"malevolent expressions" is rendered by "Ausdrücke des Hasses." The court, however, overruled this argument, and gave judgment as above recited.

The judgment having been published, entered of record, and subscribed by the justices, the attorney general moved that the respondent be sentenced to imprisonment, the costs of trial, and to exile from the Greek State as an alien, "by his manner of life, his character, and his conduct, pre-eminently dangerous to the common safety and to morals," according to the 34th and 37th articles of the penal code. No new evidence was offered in support of the motion for the exile of the defendant, and, of course, it could legally rest only on the facts on which the court had based the conviction. This motion was resisted by the counsel for the defence, on the ground of a total want of evidence to show that the respondent was, "by his manner of life, his character, and his conduct, pre-eminently dangerous to the common safety and to morals;" and they further insisted that, inasmuch as the court, in pronouncing the judgment already published, had not adjudged the respondent to be a person dangerous to the common safety and to morals, it was now too late to supply the omission, which would be tantamount to the rendition of a new and distinct judgment. The court, however, overruled the objection, and, without further proof, proceeded to make a second and independent adjudication, that the respondent was a person of the character contemplated in the 37th article of the penal code, and this, not in respect of the particular "malevolent expressions" of which he had been convicted, but upon the vague allegation that he had "inveighed scandalously against the oriental church, its canons, traditions, and customs," a charge not sustained by specific proof, nor embraced in the facts before found by the court.

Enough has been already said to show that the conviction of Dr. King was unjust and illegal, the facts found by the court being unsustained by the evidence, and its legal conclusion unwarranted by the law and the facts found; but it is the duty of the undersigned further to represent to his excellency the minister of foreign affairs, that it is in proof that the synod had been permitted to rouse the worst passions of the multitude against Dr. King, by denouncing and anathematizing him and his opinions in terms but ill befitting gentlemen or Christian teachers; that measures were taken by his persecutors to excite popular indignation against him, by posting up and circulating inflammatory and abusive placards, and by other means, with the view of gathering at the trial a hostile crowd to influence the court and obstruct the defence; that accordingly, a large and infuriated mob, led by Greek priests, and some of the witnesses for the prosecution, was collected at the trial; that the presiding judge allowed these disorderly persons to insult the respondent and his counsel, to browbeat and overawe the witnesses for the defence, and to cheer and applaud the witnesses for the prosecution; and that his pretended efforts to preserve order and decorum were of so feeble a character as apparently rather to stimulate and encourage, than to intimidate and restrain the rioters; that he allowed the attorney general to devote a large part of the time consumed in his argument to reading and commenting upon certain works of religious instruction, published, in part, in foreign countries in the

name of Dr. King, but neither offered as evidence upon the trial, regularly proved to have been published or circulated by him, nor in any other manner properly brought before the court; that he rebuked the counsel for the defence for objecting to this irregularity; that he did not allow the respondent and his counsel full liberty to speak in his defence; and that he throughout manifested an evident determination to sustain the prosecution, and to embarrass the defence.

These facts, and others equally discreditable to the administration of criminal law in this instance, are established by the testimony of witnesses of undoubted intelligence, impartiality, and integrity; but as they are to some extent matters of opinion, and may be disputed, as there is no reason to believe that they affected the predetermined judgment of the court, and as they are unimportant in comparison with the palpable absurdity of its legal conclusions, and of consequence only as serving to characterize the *animus* of that tribunal, they are here referred to as an indication of the spirit of the legal proceedings against Dr. King, rather than as a substantive ground of a demand of redress.

The imprisonment under the sentence of the court having commenced, the case was carried before the areopagus for revisal, and various errors in law were assigned by the learned counsel for the defence. The causes of reversal urged by them were all plausible, and some of them evidently conclusive, the case presenting a clear instance of the "erroneous application and false construction of the criminal law."

The areopagus reversed the judgment of the court below as to the application of the 18th article, on the ground that the portion of the act of accusation which charged a violation of that article was no longer before the court, the act of accusation having been ordered to be amended by striking it out, but it declined jurisdiction of the question raised under the 17th article, and though the functions of the areopagus are substantially the same as those of the higher courts of judicature in other European countries, it arrived at the extraordinary conclusion that it did not possess the power of reviewing the decision of the court below on the purely legal question whether the facts found by that court did or did not constitute a crime in law. The areopagus affirmed in effect the general principle that, whenever an inferior criminal tribunal resolves that certain specified facts do constitute a certain crime, and, in designating the crime, follows the words of the statute forbidding it, its judgments are irreversible, and its justices are therefore the supreme judges of the law as well as of the fact.

Although this decision of the areopagus (resolutions on the first and second errors assigned, No. 18, of March 13, 1852,) is expressed with studied obscurity, it can bear no interpretation but that above put upon it, and the pretence of treating these exceptions of the counsel as an attempt to raise a question upon the sufficiency of the proof of facts is a mere subterfuge.

It is difficult to say which decision is most calculated to excite surprise in the minds of intelligent jurists, whether the gross illegality of the resolution of the court below, that under a constitution guarantying universal religious liberty and freedom of worship and of speech, and under laws enacted expressly for the protection of that liberty, the naked utterance in a public sermon of opinions entertained by a large propor-

tion of the Christian world, though conflicting with those of the Greek church, unaccompanied with contemptuous, approbrious, or malignant language, is by the law of Greece punishable with imprisonment and banishment, as a "malevolent expression;" or the solemn decision of the highest legal tribunal of the land that it does not possess the power to correct the errors of inferior courts in matters affecting character, personal liberty, life itself, even when those errors are patent upon the record.

It was an unworthy evasion to pretend that the areopagus was called upon to interfere with the proof of mere facts. As such stretch of power was asked by the counsel for the defence, and the court was simply required to exercise its legal right and duty of pronouncing whether the fact found—and which the code of criminal procedure orders to be spread upon the record, for the very purpose of allowing a revisal by the superior tribunals—did or did not amount to the crime made punishable by the 17th article, or, in other words, whether there had or had not been an "erroneous application or a false construction of the criminal law."

If the decision of the court of correctional police is indeed the law of Greece, then not only does the law, in defiance of the constitution, forbid the public worship of all who dissent from the oriental church, but the Greek clergy themselves cannot perform the services of their own church without incurring the penalty of the law, for attacking with "malevolent expressions" the "dogmas, the ordinances, and the customs" of other churches equally protected by the same law.

The Lutheran cannot publicly pronounce his creed, or state his opinions on the subject of transubstantiation; the Anglo-Episcopalian cannot teach the catechism of his church, or recite those articles of his faith which charge "the churches of Jerusalem, Alexandria, and Rome" with "error, in manner of living, in ceremonies, and in faith;" condemn the belief in purgatory, the adoration of images and relics, and the invocation of saints; deny the doctrine of transubstantiation, and teach that the spirit proceeded from the Father and the Son; the Catholic cannot maintain the supremacy of the Pope, the validity of the decrees of the later councils and communion in one kind, or deny the necessity of baptism by immersion; the Mohammedan cannot question the divinity of Christ, or affirm the supremacy of his own prophet; nay, the Greek cannot publicly deny the doctrines espoused by other sects, or maintain those dogmas of his own church which are inconsistent with the truth of rival creeds, and still less can he fulminate the curses which the triodion denounces against those who disapprove the adoration of images, or the other traditions and doctrines of the oriental church, for the obvious reason that, according to the principles of the decision under consideration, each of these acts would constitute the offence of attacking, with "malevolent expressions," the faith of some church entitled to the protection of the law. And consequently, if this decision be sanctioned by the government, and impartially carried out by the courts, there can be no such thing as religious worship or public religious teaching in Greece; and even the members of the national synod, which, in its anathema of Dr. King and his works in 1845, classed the Jesuit "monks of the western church" among the "legions of Satan," and com-

pared them and "other false apostles of the western church" to "wild boars devouring the vine of the Lord;" and again, in its anathema of 1851, denounces with like unchristian bitterness the creeds of protestant sects, whose adherents are many times more numerous than the entire population of Greece, are liable to punishment for their "malevolent expressions" against the ministry and the doctrines of other branches of the Christian church.

Again, if the solemn resolution of the areopagus is law, the justices of the inferior tribunals are supreme judges of the law and the fact alike in all cases; and had the court of correctional police resolved that the very facts found by it, and recited in the judgment in the present instance, constituted the crime of theft, or forgery, or treason, the areopagus, upon its own principles, could not have interfered to correct the error. Whenever, then, another inferior tribunal shall be found in Greece blind, or bigoted, or corrupt enough to apply to the public worship of the dominant religions of England or of France, or even of Greece herself, the principles of the decision of the court of correctional police in the present case, the judgment of condemnation will be irreversible, and the areopagus will have bound itself by the precedent to affirm it.

This *reductio ad absurdum* might be indefinitely extended, by further obvious and familiar illustrations; but the undersigned would feel that he was trifling with the intelligence of the enlightened and distinguished persons who compose the government of his majesty the king of Greece, were he to enter into a more formal refutation of the preposterous conclusions of the courts above recited. To jurists of competent legal discretion, a simple history of the case puts their absurdity in as glaring a light as the most labored commentary could do.

For this reason, and because the nature of his instructions renders a full discussion superfluous, the undersigned contents himself with calling the attention of the government of Greece to the foregoing statement, which, with the exception of so much as relates to the disorderly proceedings at the trial, will be found to be borne out by the record itself, and with further obeying his instructions, by communicating the deliberate opinions of the President of the United States upon the case, premising only that those opinions have been formed upon a full examination of all the provisions of the constitution and laws of Greece supposed to bear upon the question, and of the entire record, from the anakrisis to the final judgment of the court of areopagus.

The undersigned, then, is instructed to convey to the government of Greece the opinion of the President of the United States, that though, in the trial of Dr. King, the forms of the law may have been in general observed, yet that the same was conducted in many respects unfairly and illegally, and in the main with a gross departure from the spirit of the law; that it is quite plain that he was not brought to trial for any offence clearly defined by the laws of Greece; that the constitution and laws of Greece guaranty a full toleration of all religious opinions, and that there is no proof that Dr. King has exceeded the just limits of the liberty of speech implied in such toleration; that circumstances warrant the conclusion that no belief was really entertained, on the part of the court, that Dr. King was guilty of the high crime laid to his

charge; in a word, that the whole course of the proceedings is such as to place the character of the Greek tribunals in an unfavorable light; and that either the sound and safe maxims of criminal jurisprudence which prevail elsewhere are unknown to the jurisprudence of Greece, or her tribunals were presided over by persons who entertained very false notions of the judicial character, or there are prejudices against Dr. King, which, in his case at least, corrupted the fountains of justice.

The President does not attempt to determine to which of these causes the perversion of justice implied in the result of Dr. King's trial is mainly to be attributed, but he finds reason to believe that it was, in part at least, produced by a concurrence of all three. In the opinion of the President, these facts destroy all confidence in the Greek courts, so far as Dr. King is concerned, and compel him to regard their decision in this case as unjust and oppressive.

Under such circumstances of palpable and notorious abuse of the forms of law, and their perversion to purposes of injustice and persecution, it is plain that the government of Greece ought fully to redress the wrongs which Dr. King has suffered, and to take such further measures as will testify its respect for the integrity of its jurisprudence and evince a determination to maintain the true interpretation of the law, and the rights of personal liberty, of conscience, and of speech, so nobly proclaimed by infant Greece in the earliest laws of her revolutionary era, guaranteed by the treaty between the allied powers that established her national independence, and re-asserted and secured by the constitution at present in force.

At the same time, the President of the United States desires to treat with respect even the forms of justice, under laws which, truly interpreted, are distinguished for their just and liberal spirit, and he is not disposed to conceal the embarrassment which would attend an attempt, on his part, to exact that full satisfaction for a judicial wrong which justice to Dr. King, and the honor of Greece herself, alike concur in demanding.

He is conscious of the difficulty and delicacy of animadversion by one branch of a government upon the proceedings of another, and he is aware that in the present case, the difficulty is increased by the subject matter of the trial, that of an alleged offence against the established religion of the state. There is no subject in reference to which the minds of men, in other respects intelligent, are so apt to be biassed by prejudice, and on which, when heated by controversy, they become so incapable of weighing evidence or listening to reason; and if the President should undertake formally to arraign before the government of Greece the conduct of the tribunals in this case, the full discussion of its merits would oblige him to enter into an inconvenient examination of some of the greatest niceties of dogmatic theology.

The President regards such discussion as inexpedient, and confidently believes that to ensure a prompt reparation of the wrong which has been committed under the garb of law, it is only necessary to call the attention of his majesty to the gross injustice which Dr. King has suffered, and the stain which such proceedings, if sanctioned by the supreme power, cannot but fix alike upon the jurisprudence and the government of Greece.

For these reasons, and because the wrong, though great in principle and in ulterior consequences, has not been hitherto attended with large pecuniary loss or heavy personal suffering to Dr. King, I am not now instructed formally to demand a pecuniary indemnification or other satisfaction to him for that injury, or any retributive measures against those at whose hands he has suffered wrongs so injurious to himself, and so discreditable to the authorities immediately concerned in the infliction of them; but I am directed to inform his majesty's government, that the President of the United States expects that a formal revocation of the sentence of banishment against Dr. King be forthwith granted by the proper department of the government of Greece.

The President of the United States having thus, by the great moderation of this demand, evinced his friendly disposition towards the government of Greece, and his respect for the formal administration of the laws, the undersigned has no fears that the sovereign authority of Greece will permit its own laws, wisely enacted for the protection of religious worship, to be longer wrenched into engines of persecution; and he cannot doubt that his majesty, mindful of the solemn sanctions of the great international compact that called him to the throne, and solicitous for the pure and impartial administration of the law, which is the surest guaranty for national faith and the private integrity of the citizen, will at once fulfil the just and reasonable expectations of the President of the United States, by relieving Dr. King from liability to exile or other persecution under the wrongful sentence which has been pronounced against him, and thus remove a cause of irritation between nations which have long been united by generous and honorable sympathies, and which, not being estranged by any conflicting interests of politics or commerce, ought to maintain undisturbed the good understanding, and the relations of mutual friendship and respect, which have hitherto so happily subsisted between them.

The undersigned avails himself of this occasion to renew to the minister of foreign affairs the assurance of his most distinguished consideration.

GEORGE P. MARSH.

His Excellency A. PAICOS,
Minister of Foreign Affairs.

Mr. Marsh to Mr. Marcy.

[Extract.]

ATHENS, *June 17, 1853.*

SIR: In my dispatch of June 2d, I stated that the minister of foreign affairs, Mr. Paicos, had promised a speedy reply to my notes of May 13th and May 17th, copies of which accompanied my dispatch of June 2d.

Not having received any answer up to the 15th of the present month, I, on that day, addressed a note to Mr. Paicos, asking the promised replies. I have this moment received a note from him, altogether

evasive in its character, but expressing the hope that he should be able to give me answer in a few days, (dans quelques jours.)

It is now twelve years since the discussion concerning the land was commenced by Mr. Perdicaris, and Mr. Paicos informed me on the 31st of May, and stated in a former dispatch, that the government was only waiting to ascertain the value of the land before giving a definitive answer.

The other question has been the subject of public discussion for a year, and the Greek government was informed by me, early in August last, that I was investigating the question by order of the President of the United States, and I have no doubt it has long ago been fully examined by the Greek ministry.

The real motive for delay is the desire to await the action of Russia on the oriental question, and, perhaps, the hope that the approach of the sickly season will drive both me and the ships of the squadron from Athens.

* * * * *

I have the honor to be, sir, your most obedient servant,

GEORGE P. MARSH.

Hon. W. L. MARCY,

Secretary of State.

Mr. Marsh to Mr. Marcy.

[Extracts.]

ATHENS, June 23, 1853.

SIR: On the 2d of June, I transmitted you copies of my two notes to the minister of foreign affairs, referred to in my dispatch of May 27th. On the 16th instant I forwarded you, by the hands of the Hon. Caleb Lyon, the paper on the political condition of Greece, referred to in my despatch of June 2d. On the 17th instant, I communicated to you the substance of a note I had just received from Mr. Paicos, and I now annex a translation of that note. On the 18th instant I had an interview with Mr. Paicos, which resulted in a promise on his part, that answers to both my notes should be given, at furthest, on Tuesday, the 21st instant. In accordance with this promise, the answers were delivered on that day, but as I have been since constantly engaged in preparing my rejoinders, it is not in my power to accompany this dispatch with translations of them. In regard to the criminal prosecution, the government refuses to remit the unexecuted portion of the sentence against Dr. King, on the ground that such remission would be an encroachment on the independence of the judiciary; the integrity, impartiality, and ability of which, as well as the liberal and tolerant spirit of the Greek government, clergy and people, it vaunts; it professes to believe that the judgment was in accordance with the constitution and laws of Greece, but shelters itself behind the principle of the inviolability of judicial decisions, and declines to enter into any argument in reply to the objections urged against the legality of the conviction, and finally denies the constitutional power of the king to grant even a "partial revocation" of the sentence.

* * * * *

The reply to my demand of a pecuniary indemnification to Dr. King, in respect of his lands seized to public use, begins with a feeble argument, in support of the ground, that the claimant ought to have been confined to his remedy at law, but finally yields the point, and offers to pay him for the whole parcel of ground, "at the rate at which land in that vicinity was sold in 1835," (the date of the first encroachment upon his rights,) adding interest to an amount not exceeding the principal, and deducting all rents received by him for the use of the property. It further offers him the option of consenting to the laying out of a street and square upon the ground, and receiving compensation for such portion of it as shall be occupied for public use, upon the *same principles* as in case of the acceptance of the first offer. This proposal I have rejected, for these reasons: The debt and credit account, which Dr. King has very carefully and minutely kept, shows, that in small buildings, walls, and other improvements upon the land, and other necessary disbursements, independent of the original cost, for which the minister offers no compensation, he has expended five hundred dollars more than the total amount of rents received; besides which, a considerable expenditure has been incurred, in the removal of materials, collected at various times for building upon the ground, and which the public authorities forbade him to employ. The statement of rents received, moreover, includes about seventy dollars, paid in advance, on unexpired leases, which he must refund to the tenants, if the property is now applied to public use, and consequently, if he is to account for rents, as proposed by the minister, he would be a loser to a very considerable amount. Again, as to the basis of estimation proposed by the minister, the price, namely, at which lands in that part of Athens were sold in 1835, I find, that in consequence of the total uncertainty of the plan which would finally be adopted in laying out that part of the town, (all plans proposed up to that time having been rejected,) and other circumstances, no purchases of land in that vicinity were made at the period in question, except at forced sales, or under such circumstances as to furnish no criterion of value, and that, in short, no regular market price of lots, at that time and place, can be discovered. It is further to be observed that, although the government repeatedly obstructed Dr. King's proprietary rights, yet these obstructions were acts of arbitrary power, not in accordance with any law of Greece, and therefore the complainant is not compellable to date his abandonment of his title to the government at any moment it may suit its convenience, and receive compensation accordingly, but he may elect to hold the land until it is legally determined that a title was vested in the government, and he is both legally and morally entitled to the benefit of any increase in its value in the meantime. In 1844, as will be more fully seen by referring to my original report, and my note of May 17th to the minister of foreign affairs, a judgment was rendered against the public, at the suit of Mary Raftopoulos, for the value of certain lands adjacent to Dr. King's, and which had been sequestered to public use (although not actually taken into possession by government) at the same time, in the same way, by the same ordinance, and for the same purpose, as Dr. King's.

This decision, having been affirmed by the areopagus, is conclusive as to the right; and I find, in the further proceedings in the case, a just, fair, and moderate rule of damages.

Judgment having been rendered against the public, an appraisal of the lands was ordered, in the form prescribed by law. This order was executed, the lands appraised by competent judges, at six and one-quarter drachmas the square common peek, and the appraisal, which is believed to have been an extremely moderate one, though resisted by the counsel for the government, was confirmed by the court. The land of Raftopoulos is upon a lower level than Dr. King's, bounded upon insignificant lanes, and unprovided with water. Dr. King's property enjoys a commanding prospect, lies upon the great street of Minerva, has several abundant and very costly wells, excavated to a great depth in the solid rock, and is, in my judgment, worth at least fifty per cent. more than the lot of Raftopoulos. It is, in short, as desirable a parcel of ground as any unoccupied lot in the city of Athens. It is, therefore, fair, at least toward the government of Greece, to take that appraisal as the basis of valuation in the present case. The legal rate of interest, at Athens, is twelve per cent. per annum, but interest does not continue to accrue after it equals the amount of principal.

I doubt, however, the applicability of the rule to a case of this nature. Dr. King, having received no profit from the use of his land, is clearly entitled to interest; and the government has paid interest to Raftopoulos, Finlay, and all other foreign claimants under like circumstances. Besides this, he is entitled to damages for the obstruction of his rights for the period preceding the vesting of the title in the government; and as the appraisal, which I take as the basis of valuation, was an estimate of property *without* any improvements, he is also entitled to remove the materials of the houses, walls, and other structures upon his land. I have, however, determined to allow the rule that interest shall accumulate only to the amount of the principal, and to waive the claim for damages for interference with the claimant's rights prior to the selection of the ground as a site for the church of the Saviour; and I have proposed to the minister of foreign affairs to compromise the claim on the following basis, namely: The government shall, at its election, *either* pay Dr. King for the whole property, at the rate of twelve and a half drachmas (six and a quarter drachmas principal, and the like amount for interest) per square common peek, amounting to about \$23,000 in the whole, (which is less than one-fourth of Mr. Consul Diomatari's estimate,) *or* it shall open the street and square guaranty the title of all lands transferred to him, by operation of law, from other proprietors, in the process of *squaring* the building-lots according to law, and pay him twelve and a half drachmas per peek for so much of the land occupied by the street and square, as he would be entitled to compensation for by law; and, in either event, there shall be reserved to him the right of removing the materials of the buildings, &c., at any time within six months. By the law for laying out the city of Athens, when lands are to be occupied by streets or squares, the proprietor loses a certain portion, without indemnity, in consideration of the benefits resulting to the residue from opening the street, and is paid for the

remainder. If the latter proposal is accepted, Dr. King must surrender, without compensation, more than one-fourth of his valuable property; he receives about nine thousand dollars for the residue of the land taken for public use, and there will remain at his disposal, in five separate parcels, about four-elevenths of the whole quantity. The liberality of this offer, which is made with Dr. King's full and ready assent, is such, and its justice so clear, that I do not think the government requires any time to determine upon its acceptance; and as (the Cumberland having left Constantinople) I consider both my own presence and that of an American ship of war highly important at that capital at the present juncture, I last evening informed the minister of foreign affairs, in communicating the proposal, that I should expect it to be accepted or rejected by Friday morning. I added that it was the most favorable terms I should offer; that, as the sum proposed was less than I thought Dr. King fairly entitled to claim, the proposal must be considered as made by way of compromise only; and that, if not at once accepted, it would be withdrawn and the President would feel himself at liberty to insist on such other or further satisfaction as he might deem just.

I shall forward copies of my last note to Mr. Paicos, and of such reply as I may receive, as soon as they can be prepared.

My instructions direct me, in case the Greek government refuses to make to Dr. King such compensation as I think reasonable, to propose to refer the question in dispute to the arbitrament of a friendly power; but I am in doubt whether, since the Greek government offers a pecuniary compensation, and it is now a mere question of the *amount* of damages, I ought, if my proposal is rejected, to propose an arbitration. You will perceive, sir, that by the proposal which the Greek ministry will probably consider the most favorable, the amount claimed by me, in behalf of Dr. King, is but nine thousand dollars.

I presume the ministry will at least modify its offers so far as to waive its demand that Dr. King shall account for rents received, and, although its estimate of the value of the lands will be low, it can hardly be less than one-half the amount of mine. I can scarcely suppose that the queen of England, or the king of Belgium, would take cognizance of a question of so small concern, and I shall endeavor to avoid the necessity of making the proposal if any practicable method shall suggest itself.

It is proper to mention that Mr. Wyse, the minister plenipotentiary of Great Britain, informs me that his government has expressed a strong desire for the amicable adjustment of the difficulty between the government of the United States and of Greece, and has authorized him to make an offer of mediation between the two powers. This offer I neither accepted nor declined; but I am confident that it was made in a friendly spirit, and I may, perhaps, in case of necessity, at least in an informal way, avail myself of it.

* * * * *

I have the honor to be, sir, with the highest respect, your obedient servant,

GEORGE P. MARSH.

Hon. W. L. MARCY, *Secretary of State.*

[Translation.]

Ministry of the King's Household and of Foreign Affairs.

ATHENS, June 5, (17,) 1853.

SIR: I have received the letter you did me the honor to address me under date of the 15th of June.

As I had the honor of observing to you orally, the king's government has not failed to take into serious consideration your two long communications relative to Dr. King; but, in consideration of the importance of the subjects treated of in those papers, and the numerous documents which accompanied them, it required a careful examination, and the time necessary to collect the elements to enable it to arrive at a decision and to prepare an answer.

Having been obliged, for this purpose, to recur to various authorities, and to collect and consult a large number of documents, it could not at once give a definitive answer. This labor is now considerably advanced, and I hope, consequently, in a few days, to be able to satisfy the demand you addressed me by your letter of the 15th of June.

If I rightly recollect, I intended to speak to Mr. Wise of the letter which accompanied the dispatch addressed to you, at Spezzia, by the Secretary of State of the United States, and to which I afterwards thought a reply unnecessary.

Accept, sir, the assurance of my high consideration,

A. PAICOS.

Mr. MARSH,

Minister resident of the United States, near the Ottoman Porte.

Mr. Marsh to Mr. Marcy.

ATHENS, June 24, 1853.

SIR: I enclose herewith a copy of my last proposal to the Greek government for the adjustment of Dr. King's pecuniary claims against it, and am, most respectfully, your obedient servant,

GEORGE P. MARSH.

Hon. WM. L. MARCY,
Secretary of State.

ATHENS, June 22, 1853.

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of your excellency's communication of the 8th (20th) June, 1853, and to offer the following observations in reply, together with a proposal for the adjustment of the claim therein discussed, upon so just and liberal a basis that I flatter myself that the government of his Hellenic majesty will at once accede to the terms proposed.

Although the offer of the ministry of foreign affairs, to compensate the claimant for the obstruction of his proprietary rights, might seem

to render superfluous the discussion of the question whether he ought to have sought redress against the government of Greece by an appeal to the local tribunals, yet, as I consider the extraordinary position assumed by your excellency, in regard to this point, as wholly inadmissible, and as tending, if allowed to pass unquestioned, to lay the foundation of a dangerous innovation upon the established principles of international law, I deem it my duty to protest against it, and to suggest some brief remarks respecting it.

Every government, by virtue of its supreme power over its subjects, may establish such rules respecting the proof of their claims against it as it thinks proper, and it matters not whether the board of trial be a chamber of accounts, a legislative committee, a judicial tribunal, or other subordinate and dependent jurisdiction. It may also, by virtue of the same supreme authority, deny them justice altogether; but, in respect to the claims of aliens, not founded on contract, but upon forcible acts of the government, by its authorized agents, it has no more power to oblige the aggrieved party to resort to tribunals created by, and dependent upon, itself, than it has directly to constitute itself the sovereign judge of such claims, and to arrogate to its decisions the binding force and effect of a judgment by a court of competent jurisdiction. The President of the United States might, in his discretion, have referred the claimant in the present case to the tribunals of Greece for redress, and, but for the very sufficient reasons suggested in my note of May 17, he in all probability would have done so; but the principle *nemo in propria lite judex* is, with few limitations, as applicable to governments as to individuals, and the innovation which your excellency proposes, upon the received rules of international law, will, it is believed, meet with no recognition among the powers of the civilized world.

Dr. King acquired title to the lands in question before the organization of the present government of Greece, and although since resident in its territory, he has never become, by any act of his own or by operation of law, entitled to any right, or subject to any liability, of the Greek subject, except those which are common to all foreigners, alike, within the territorial jurisdiction of that kingdom. He has, therefore, forfeited none of his rights as an American citizen, and those rights are in no way impaired by the fact that he has been for some years com-morant at Athens.

Nor is there, so far as the question at issue is concerned, any distinction between claims accruing from the obstruction of rights to landed property and those founded upon a wrong to the person or to personal estate.

If, therefore, the government of Greece, instead of illegally interfering with his proprietary rights, had impressed his person, and compelled him to do military service on board a ship of its armed marine, or had forcibly seized, and applied to public use, a vessel or cargo of his found in the waters of Greece, or committed any other violent wrong upon his person or estate, it might, with equal propriety and justice, have turned him over to any court or commission it chose to select or create for the occasion, and required him, in place of invoking the interposition of his

own government, to establish, to the satisfaction of such tribunal, the justice of his claim to redress.

Nor can it be argued that a resort to the local tribunals is a condition precedent to an application to the alien's own government, because, if he voluntarily submits himself to their jurisdiction, and the decision be adverse to him, it would be urged that upon general principles the judgment of the court was conclusive, and that the matter had become *res judicata*.

It is evident, therefore, that if the principle contended for by your excellency be admitted, any government may release itself from all responsibility for every wrong, however flagrant, to the persons or property of foreigners, by referring them to jurisdictions of its own creation, and thus the right of nations to interfere in behalf of their own citizens, injured in their persons, or deprived of their estates, by the wrongful act of foreign powers, might be at once practically abolished.

The government of Greece will readily perceive that the admission of a principle fraught with consequences so mischievous would be in the highest degree prejudicial to the welfare and the honor of independent sovereignties, and would powerfully tend to weaken the confidence of nations in the good faith of each other, and perpetually to interrupt those amicable relations, and that freedom of intercômmunication between the different countries of the civilized world, which it is now the aim of all wise governments to facilitate and promote.

In applying, as I have done above, the qualification *illegal* to the interference of the Greek government with Dr. King's proprietary rights, I do not use the word in an offensive sense, or as charging the government with the deliberate commission of a moral wrong, but simply as indicating that the acts complained of were the acts of an arbitrary power, and not conformable to any law of Greece.

Dr. King's rights have been obstructed at various and frequently recurring periods, between 1835 and the present hour. The ordinance of 30th January, (11th February,) 1834, for removing the seat of government from Nauplia to Athens, provides that the streets and squares of the new city should be opened immediately. The plan of Cleanthes and Schaubert, to which that ordinance referred, was forthwith abandoned, and your excellency admits that the ordinance adopting and sanctioning the plan of Klenze, (which plan is believed to have been prepared as early as 1835,) was not issued (*émise*) until 1848.

No street or square was ever opened upon Dr. King's land, nor was any demarcation of the limits of a street or square ever made upon the land by visible boundaries, or communicated to the claimant. The liability of the demus, by the plain words of the law and the decision of the Greek courts, does not attach until the street be "opened." It was not the duty of the demus, nor had it the power, to open streets in Athens, both because, according to your excellency's declaration, there was no approved plan until 1848, and because the execution of the plan was never committed by law to that body. It is no longer pretended that the steps contemplated by the royal ordinance of the 12th November, 1836, for fixing the proportions of the indemnity to be paid by the demus and the neighboring proprietors, were ever taken, nor indeed could they be taken, until the plan of the city was

finally determined upon. It is, therefore, idle to contend that Dr. King could have maintained an action against the demus before the year 1848, nor does the ministry of foreign affairs, if I understand your excellency's argument, maintain that a suit would have lain against the demus before that period.

Has any liability on the part of the demus been since created? Independently of the objection, which, in accordance to the opinion of the Greek courts, I hold to be conclusive, that it is the opening of the street or square alone which makes the demus liable, it does not appear to me that the plan of Klenze has ever been adopted in any such way as to give it binding force.

Your excellency is pleased to observe, that the ministerial ordinance adopting that plan was issued in 1848. The word selected by the ministry of foreign affairs implies publication, and I can only understand your excellency as referring to the mode of promulgation pointed out by the first and second sections of the royal ordinance of February 1, 1833, according to which, laws and ministerial ordinance take effect from the time of their publication in the government Gazette.

I have searched the Ephemeres for 1848 in vain for the ordinance in question, and do not learn that it was ever promulgated in that journal at any later or earlier period. There is, therefore, no legal presumption that Dr. King had notice of the existence of the ordinance in question, and, as a matter of fact, such notice is denied by him. It is now, I think, sufficiently shown that Dr. King was at no time *bound* to sue the government, and that he never *could* have maintained an action against the demus. That he might have sued the public in 1844, and even obtained a judgment against it, is possible; but, when he was notified by Mr. Londos, in 1844, that if not paid for his land in ten days he might resume the use of it, he had no motive for suing the government, because he preferred to retain the peaceable possession of his land, rather than to part with it upon the principles of compensation adopted by the court in the case of Raftopoulos, and in the spirit of friendly regard, which, in spite of the great wrongs which he has here unworthily suffered, he has uniformly manifested towards the government and people of Greece, he chose to waive his claim for past damages, instead of annoying the public, by further agitating a subject which the solemn declarations of the government, through the ministry of the interior, authorized him to believe was now settled forever.

He now remained in the quiet enjoyment of his own for some years; but no sooner did he attempt to turn the property to profitable account, than he was again forbidden by the public authorities, and this took place, not as your excellency supposes, first in 1850, but in 1848. He had clearly, even now, no legal claim against the demus, for the reasons already urged, and the fierce hostility to which, as is well known to his majesty's government, he had well nigh fallen a victim in 1847, in consequence of the machinations of the infamous Simonides and his confederates, had now taught him that it was too late for him to seek redress through any other local channel than by direct appeals to the magnanimity and justice of the government of his Hellenic majesty.

This appeal was made and unfortunately rejected, as it had been on a former occasion, and it was only after repeated ineffectual efforts to

obtain satisfaction from the government of Greece that he invoked the interposition of the President of the United States.

Upon a full and careful consideration of the case, the government of the United States, as your excellency is already advised, resolved to interpose in his behalf, and I take this occasion to rectify an error into which your excellency may perhaps have fallen, in supposing that the President of the United States is merely exerting his *good offices* in bringing about a settlement of this long pending dispute. I am instructed, as I observed in my former note on this subject, formally to demand the payment of a reasonable indemnity to Dr. King, and this demand I now repeat in behalf of the President of the United States.

My instructions from the government of the United States forbid me to prolong this discussion, and, as the argument is, in my judgment, sufficiently developed, it must now be brought to a close.

As your excellency informed me some weeks since, that his majesty's government was making inquiries into the value of the land, with a view of fixing the compensation to be paid to Dr. King, I had hoped that some distinct proposal would have been made on the subject, and I regret that your excellency did not think proper to suggest either a specific sum, or some more clear and certain principle of compensation than the doubtful rates at which some parcels of ground might have been sold eighteen years since, at a period when the complete uncertainty with regard to the plan of the city prevented frequent sales, or the establishment of anything like a regular market price for lands in that part of Athens.

Although Dr. King's proprietary rights were obstructed in 1835, yet no legal measures were at that time taken to deprive him of the title to his land and to vest that in the Greek government. Although, therefore, he is entitled to damages for the loss of the profitable use of his lands from that period, yet he is not bound to treat them as having been at that time transferred to the government, and to content himself with the price for which they could, under the existing circumstances, have been sold. For this reason, I cannot accept the criterion of value proposed by the ministry of foreign affairs, but I am happy to avail myself of the liberal spirit of my instructions, by suggesting a certain, clear, and moderate rule of damages, which I beg your excellency to understand is the lowest that my instructions allow me to propose. Before stating this rule, I think it proper to apprise the ministry of foreign affairs that no deduction from the amount proposed will be made on account of rents received by Dr. King, because I find, upon an examination of the debt and credit account, which he has carefully kept in respect of the land, that, irrespective of any compensation for his own time, labor and trouble, and omitting all charge for expenses of removal of building materials, collected for use upon the land, and which the public authorities have forbidden him to employ, the amount of his expenditures for walls, buildings and other disbursements connected with the land, subsequent to the original purchase, exceeds the amount of rents received by nearly three thousand drachmas, besides which, if this proposal be accepted, he will be obliged to repay to tenants about four hundred drachmas for rents received in advance for leases yet unexpired.

I propose, then, to take, as the basis of estimation, the appraisal of the land of Mary Raftopoulos, in 1844, when the principle of the liability of the government was first legally established.

That appraisal, as your excellency is aware, was made in due course of law, by order of court, in a suit to which the government was a party, and, though resisted by the crown, was confirmed by the court. The lands of Dr. King are evidently more valuable than those of Raftopoulos, because they are more elevated, otherwise better situated, and provided with several abundant and costly wells, and, therefore, the valuation proposed is a fair one, so far, at least, as the government is concerned. Upon the amount thus ascertained Dr. King is entitled, of course, to interest, and it is doubtful whether the rule of Greek law, which restricts the accumulation of interest to an amount equal to the principal, is here applicable, but I waive this objection, and consent to allow the rule. The land of Raftopoulos was appraised at six and a quarter drachmas the common peek, and the addition of the lawful interest doubles the amount.

Besides this, Dr. King is clearly entitled to damages for the loss of the use of his property for the nine years preceding the decision of the court in the case of Raftopoulos, but in the present offer of compromise this claim is waived.

I propose, then, to accept, in full satisfaction of the claim under discussion, the sum of twelve and a half drachmas per common peek for the entire parcel of ground in question; and as the quantity of land, according to a recent estimate of the city architect, is eleven thousand one hundred and one peeks and eleven twenty-fifths, ($11,101\frac{11}{25}$), the total amount will be one hundred and thirty-eight thousand seven hundred and sixty-eight drachmas, (138,768.)

This estimate excludes a small portion of ground containing about four hundred and twenty (420) peeks, for which, as it has been recently purchased, Dr. King is not entitled to compensation on the same principle as in respect to the remaining lands, and he is content to retain the same, or to receive compensation for it in the same way as other proprietors. Neither does it include the buildings or building materials of the houses, fences, or other structures upon the lands, the right to remove which, at any period within six months, is reserved to the claimant.

If, however, it is the wish of the government to open and lay out a street and square upon the ground in question, according to a plan lately communicated to Dr. King by the governmental police, I am prepared to modify the proposal as follows:

The necessary legal steps shall be taken to open the street and square, and to arrange the building lots and temachia according to the plan above mentioned, and inasmuch as there may be uncertainty in regard to the observance of the due formalities required, to vest the title of the portions transferred from one proprietor to another, the government of Greece shall guaranty to Dr. King the title of all portions thus transferred to him. Before opening the street or square, or otherwise interfering with the possession of the land, the government of his majesty shall pay to Dr. King the price of twelve and a half drachmas per common peek for that portion of his land taken by the street and

square, for which he would be entitled to indemnity according to the law of 12th November, 1836, being, according to the estimate of the architect, 2,436 royal, or 4,331 common peeks, and guaranty to him the title of the portions of land transferred to him from the neighboring proprietors as aforesaid, together with the right of removing from within the boundaries of such street and square, at any time within six months, all stone, bricks, wood, and other materials of the houses, walls, and other structures thereon standing, and the payment of the sum stipulated shall be made in full, without any deduction for fees, stamps, costs, taxes, expenses, or charges of any name or nature whatsoever, so that he receive the entire amount without abatement.

These conditions being fulfilled, Dr. King will execute any proper release or assignment of his supposed rights against the demus and the neighboring proprietors; but as I am of opinion that he has no such rights at present, the assignments must be so drawn as not to expose him to any liability in case the government shall not be able to enforce such supposed rights.

By this proposal, Dr. King loses 1,688 royal or $3,001\frac{33}{125}$ common peeks, without indemnity, and in this respect the proposal is more favorable to the government than that suggested by your excellency, which offers payment for the whole land taken.

In my judgment, Dr. King is morally and legally entitled to a higher compensation than he will receive by either of the above proposals; but the offer is made with his cheerful assent, and I am confident that his majesty's government cannot fail to find in it a new proof of the friendly disposition of the President of the United States, as well as of the moderation and reasonableness of the claimant's wishes and expectations.

It must, however, be distinctly understood, that this offer is made by way of compromise only, and that unless it be immediately accepted, the proposal, and every part of it, will be withdrawn, and the President of the United States will remain at full liberty to demand such other and further satisfaction as he may deem just.

I avail myself of this occasion to renew to your excellency the assurance of my distinguished consideration.

GEORGE P. MARSH.

His Excellency A. PAICOS,
Minister of Foreign Affairs.

Mr. Marsh to Mr. Marcy.

[Extract.]

ATHENS, *June 24, 1853.*

SIR: I have the honor to enclose herewith a translation of Mr. Paicos' note of the 9th, (21st,) referred to in my dispatch of June 23d, and my reply thereto.

The insincere and evasive character of this note deserves, in my opinion a much more severe rebuke than I have considered it within

my province to administer, and I trust I shall not be thought to have gone too far in the expressions of dissatisfaction which I have used in my reply.

Although I have seen no evidence of the possession of great legal acumen by the ministry or the courts of Greece, yet I can by no means believe Mr. Paicos so destitute of intelligence as really to have misunderstood the position of the President, or the nature of the demand made by him. The minister of foreign affairs knew perfectly well that the President asked, not the annulling of a judgment, but the mitigation of a sentence—a power which the constitution of Greece most clearly bestows upon the king, and which, in fact, is very frequently exercised by the crown.

* * * * *

You will observe, sir, that Mr. Paicos declines entering into any argument in maintenance of the decision. Doubtless it would be going too far to say that legal ingenuity could not possibly, in any degree, palliate the apparent gross iniquity of the judgment; but, at the same time, I remain convinced that it can never be shown to have been warranted by the facts or the law; and, until the ministry shall condescend to state the grounds upon which they sustain the judgment, I shall believe that they themselves regard it as erroneous and corrupt.

In acknowledging the receipt of Mr. Paicos' note, on the 22d of June, I had said: "In communicating to his majesty's government, through the ministry of foreign affairs, the opinions and the just expectations of the President of the United States on this subject, I substantially fulfilled my instructions with regard to it, and it only remains for me to express my surprise and concern at the character and tone of your communication—sentiments in which, you may be assured, the government and people of the United States will deeply share,—to reply, at an early day, to such portions of that communication as seem to me to merit notice, to report the correspondence on the subject to the President of the United States, and to await his further instructions in the premises."

On the 23d of June I received a note from Mr. Paicos, relating principally to the other question between Dr. King and the Greek government, but concluding as follows: "I cannot close this communication, sir, without expressing to you the astonishment and the lively regret I have felt on perceiving, by some expressions of your note of the 10th (22d) June, that the character and the tone of that which I had the honor to address you, under date of the 9th (21st) June, have caused you surprise and chagrin.

"It was far from the intention of his majesty's government to give to that communication a character which could in the slightest degree excite the susceptibility of the government of the United States. Its only aim was to demonstrate that the complaints of Mr. King were destitute of foundation, and that all he has said concerning the intolerance of the dominant religion in Greece was unjust. Begging you to give credit to this frank and sincere explanation, I seize this opportunity," &c., &c.

I can venture no opinion upon the question whether the sentence of banishment will be enforced against Dr. King, but I think it possible

that my reply may draw out an answer of a more explicit, if not of a more satisfactory, character than Mr. Paicos' note of the 9th (21st) June.

I have the honor to be, sir, with the highest respect, your obedient servant,

GEORGE P. MARSH.

Hon. W. L. MARCY,
Secretary of State.

[Translation.]

Ministry of the King's Household and of Foreign Affairs.

ATHENS, June 9, (21,) 1853.

SIR: I have received the note, under date of May 13th, which you have been instructed by the President of the United States to address me, on the subject of a judgment rendered against Mr. King by the court of correctional police at Athens, and affirmed in part by the areopagus.

I will not conceal it from you, sir, that the perusal of that note has produced a lively and painful impression upon his majesty's government, for it not only criticises the judgment of which Mr. King complains, but it assails the courts of Greece in general, her magistrates, and the whole nation.

This impression becomes more painful because the attack proceeds from a government whose respect for national and judicial independence, and for the principle of *res judicata*, is carried even to worship, and the President of which (in whose name the complaints of Mr. King are brought to the notice of his majesty's government) is known for the severe principles of justice that distinguish him.

It is said in the note that the President of the United States cannot place confidence in our courts for three causes, all of which, in his opinion, must have contributed to the rendition of the judgment against Mr. King, namely:

1st. The non-recognition in Greece of the principles of criminal law elsewhere generally received;

2d. The selection of persons to preside over the tribunals who entertained false notions of the judicial character; and

3d. The prevalence of prejudices against Mr. King which, in this case, corrupted the fountains of justice.

You will permit me, sir, to protest warmly, and to abstain from replying to charges as grave as unusual, which one government thinks itself entitled to address to another equally independent and sovereign. It would not be difficult to show, and to prove to you in the clearest manner, by an argumentative analysis founded upon the law and the fact, the complete injustice and inadmissibility of Mr. King's complaints, as well as the incorrect and imaginary character of his allegations with respect to the course of the trial and the judgment in which it resulted.

Greece may boast, without appearing too partial, and without fear of contradiction, of the administration of justice in her States. The independence of the judicial authority, carried to its utmost limits, is, to all those who have visited Greece, a truth attested by facts, and which Mr. King cannot but admit at heart, if he will but be just and impartial. I am, therefore, much pained that, for the reasons above alleged, I cannot enter into the details of your note, and follow you over the ground, which would engage me in a theoretical and professional discussion that would be superfluous and tend to no result.

Mr. King may, indeed, regret that the judgment in question is not in accordance with his views and his interests ; but, residing in Greece, and subject to her laws, whose protection he has enjoyed for twenty-five years, he is none the less bound, as any other person would be, to submit to the judgment.

All idea of national sovereignty and independence would be completely destroyed if every foreigner who thought his interests prejudiced by a judicial act of a legally constituted tribunal in the country of his residence, issued in the forms prescribed by law, were authorized to protest against such act before a foreign authority, and, under the pretence of illegality and oppression, to procure its interposition in the character of a supreme judge over the judicial authority of another independent State.

This principle, if it could be once admitted, would overthrow all the notions and all the rules of the law of nations hitherto received among civilized nations. It would establish a new principle, which, applied alike to all States, great or small, and to all governments, whether powerful or weak, would involve the consequence of excluding foreigners from the local jurisdiction, or of compelling the allowance of their claims, whether well or ill-founded, upon penalty of exposure to foreign interposition.

Either of these results, which are equally inadmissible by the law of nations that governs us, would plunge this age of justice and intelligence again into the darkness of the remotest eras. But let us hear Mr. King. Of what does he complain ? He specifies no forcible or violent act against his person or his property ; and the President of the United States himself is willing to admit at least as probable the observance of form in the trial of Mr. King, and the judgment which condemned him. If, then, we do not mistake the nature of his claims, he complains of a misapplication of the law proceeding, according to him, from a false interpretation, which, duly analyzed, constitutes in legal language an erroneous judgment, the only remedy against which would be the ordinary proceedings in error. This is the only actual security possible against judicial errors ; and, even in the case of bad faith on the part of the judges, it could only be a cause of appeal to the justice of the country, in order that it be severely punished by the course of proceeding provided for and pointed out by law. When the remedy provided by the law has been exhausted, any further appeal would be illegal, and any authority which should attempt to interfere would be incompetent, and would be guilty of an abuse of power.

His majesty's government itself would lie under the most absolute

constitutional inability to take Mr. King's claims into consideration; for, respecting religiously the independence of the judicial authority, it submits itself without complaint to the sovereign decisions of the tribunals of the land, after having exhausted the remedies allowed to it by law. It is surely a manifest error to suppose that, after such a judgment as has been rendered against Mr. King, neither the Protestant, nor the Catholic, nor the members of any other sect, without excepting even the prevailing religion of the land, would be free in Greece. This supposition being contradicted by actual facts, I need not declare to you here that all forms of worship recognized as compatible with society are declared free in Greece, and are equally protected; they are accordingly freely and formally practised.

No complaint has ever been made of any disturbance or hindrance experienced by any one in the performance of his religious duties. One does not find everywhere, sir, the same freedom of conscience, in spite of the intelligence of our age. Greece has the honor of being included in the few exceptions which allow it without restriction. It is in Greece, in spite of the gratuitous suppositions of Mr. King, that the Catholic, the Protestant, the Mohammedan, and the Jew discharge in full liberty their duties to God in their temples, side by side with the Greek church, without molestation or disturbance.

I appeal, sir, to your own testimony. You are too impartial not to admit what you have heard, or probably seen, in this respect since your arrival here. There are in Greece ecclesiastics of different Protestant communions. They have all performed for many years the duties of their religion with unbounded freedom. They have never complained of prepossessions or of popular prejudice against them, and still less of any manifestation of hatred towards them. Ought we not hence to infer that Mr. King owes it to himself, if he alone, among so many others, has been the object of severe criticisms and sincere warnings, and if he has ended by drawing upon himself the attention of justice by his obstinacy? It is difficult to be in the right against all the world, yet this is what Mr. King claims.

Mr. King ought to have had more respect for the religion of the country which has bestowed its hospitality upon him, and which for more than twenty years has sheltered him with the powerful protection of its laws. He ought to respect its religious convictions, because it respects and protects those of all.

The Greek people, the people which Mr. King endeavors to mark as a people superstitious and full of prejudice, and that anti-christian holy synod, as Mr. King styles it, which launches anathemas at the heterodox, see, with no less indifference than respect, temples belonging to religions different from their own rise before their eyes, and the religious processions and funeral ceremonies of these sects, environed with all possible pomp, pass before them, without disquieting themselves on the subject. Besides, there have been for many years, at Athens and at Syra, respectable persons belonging, as well as Mr. King, to the Protestant church, who are charged with the instruction of youth of both sexes, and who, always esteemed and respected, have had cause only to applaud the justice which has been rendered them, whenever any suspicion has been unjustly excited against them.

Why then, should this people, so tolerant, so indifferent toward others, be prejudiced or excited against Mr. King, without any cause on his part? This would be incomprehensible, were it not explained, and that very naturally, by the fact that Mr. King, alone among all, has undertaken to assail the religion of the land. Your impartiality and your right and just judgment will convince you, sir, after this frank and sincere explanation, that Mr. King wrongfully complains of the false and difficult position in which his own misconduct has placed him in Greece, and that he ought to feel now the responsibility he has assumed towards his own government by invoking and claiming its intervention in a matter as unjust as it is unsustainable.

I only regret that you did not think proper to honor me with your confidence last year, when you stated to me the object of your mission to Greece, and when I in vain endeavored to put at your disposal all the means, whether official or officious, which I could control in my double character of minister of foreign affairs and of justice, to facilitate your task in the search and discovery of the truth. What pains and mistakes would thus have been avoided.

* You are now, sir, in a condition to judge, by what precedes, both of the merits of Mr. King's claims and of the impossibility which his majesty's government finds in the institutions of the land of proceeding to even a partial revocation of a judicial act now become irrevocable; and all its desires to gratify the President of the United States could not cover the responsibility of exercising an excess of power on its part.

His majesty's government has not forgotten, and the nation still remembers with gratitude, the sentiments of noble sympathy and of generous affection which the people of the United States and its government manifested towards Greece during her glorious struggle for independence. It hopes these sentiments are not yet effaced from the hearts of that people, and that the present honorable President in a lively manner shares them.

His majesty's government congratulates itself on the opportunity now offered it of solemnly bearing testimony to the sentiments with which the Greek nation is penetrated toward the people and the government of the United States; but it is convinced that it would fail to fulfill the conditions of its independence, and even of its existence, if it were to attempt to set itself above the law.

Accept, sir, the renewed assurance of my high consideration.

A. PAICOS.

ATHENS, *June 23, 1853.*

YOUR EXCELLENCY: In replying to your excellency's note of June 9, (21,) 1853, I deem it proper in the outset to observe, that your excellency has throughout misconstrued the position taken by the President of the United States, and by myself, in stating the views of the President with regard to the illegality of the judgments of the court of correctional police and of the areopagus against the Rev. Jonas King.

The President of the United States has indeed expressed a decided opinion that the judgments referred to were unjust, oppressive, and

illegal; he has supported that opinion by reasoning, which must be admitted to be at least *prima facie* sufficient, and which your excellency has not found it convenient to attempt to refute; but he has not asked the government of Greece to express any censure or disapproval of the action of the court, or in any manner to annul, rescind, or vacate the judgment which they have rendered.

So far therefore as your excellency's note of June 9, (21,) is to be considered as argumentative, it is directed against a position which the President of the United States has never assumed, and your excellency's denial of the constitutional power of his majesty to "take Dr. King's claims into consideration" is wholly gratuitous, and inapplicable to the matter under discussion.

By the thirty-second article of the constitution of 1844, the king is empowered to remit, commute, or mitigate the sentences of the criminal courts. The framers of that constitution were aware of the distinction recognized in all civilized countries between the *judgment* of a court in a criminal case, which establishes the legal guilt of the prisoner, and the *sentence* which fixes the measure of punishment to be inflicted. They wisely gave the sovereign no power to interfere with the former, but full authority to dispense, in whole or in part, with the execution of the latter. This power was conferred, not to enable the crown to bestow graces upon guilty favorites, but to promote the ends of justice by remitting sentences improperly imposed, or which, for other reasons, it was inexpedient to enforce, and it is the clear duty of the advisers of the throne to recommend the exercise of this prerogative whenever, through error of the court, popular prejudice, or any other cause, a wrongful sentence has been pronounced.

Nor can it be denied that it is the right and duty of every government, whenever it sees cause to believe that one of its subjects has been wronged by the judgment of a criminal court in a foreign State, to ask the supreme authority to remit the execution of the sentence. In such case, it would ill befit the dignity of the head of a foreign government to ask such remission as a mere matter of favor, without setting forth the grounds upon which he thinks the execution of the sentence would be an act of injustice; and when such reasons are urged by such an authority, a decent consideration for the chief of a sovereign State, as well as for the opinion of the civilized world, requires that his arguments should be dispassionately weighed, and respectfully answered.

It is precisely the course suggested above which the President has pursued. He has simply pointed out the errors in the proceedings of the court, and the absurd and disastrous consequences which would follow from the sanctioning of those errors, and asked, not that the judgment be rescinded, but that his majesty the king exercise his royal prerogative of remitting the infliction of the residue of a sentence believed to have been unjustly pronounced. There is therefore not the slightest ground for treating the demand of the President as a request that his majesty should "commit an abuse of power," or "put himself above the law," or for contending that the king has not the same constitutional right of "taking Dr. King's claims into consideration" that he has to listen to a like application in behalf of any other person con-

victed of an offence against the laws of the State. If, then, your excellency's reasoning has any force, it tends to prove that, though the crown may pardon the confessedly guilty, he cannot remit the sentence of an innocent person wrongfully convicted.

It is no answer to this view of the case to say that the President is not entitled to a reply, because he has censured the conduct of one of the organs of the government. Judicial tribunals, as well as other human authorities, are frail and fallible, and whenever, through ignorance, corruption, prejudice, subserviency to political, popular, sectarian, or other special misguiding influences, or, through mere mistake, they err, it is fit and becoming that either governments or individuals, prejudiced by their improper judgments, should point out their errors, and ask to have the injurious consequences of those errors, so far as may be, prevented.

It is impossible that, upon a calm and dispassionate view of the case, your excellency should fail to appreciate these principles, or the position of the President of the United States in regard to their application in the present instance. It is therefore a matter of extreme concern to me that your excellency, instead of frankly meeting my exposition of the President's views and the grounds of them, should have declined all argument, all explanation, and taken refuge behind the principle of the inviolability of the judgments of judicial tribunals; and it is difficult to resist the belief that the conduct of the tribunals was left undefended, because it was indefensible. The mere refusal of the government of Greece to accede to the moderate and reasonable demand of the President, under such circumstances as the present, would, of itself, be a source of regret to the chief magistrate and people of the United States, but the case assumes a much graver aspect when the refusal is coupled with an official declaration from the ministry of foreign affairs, which, however disguised by diplomatic courtesy of phrase, cannot be otherwise characterized than as a distortion of the President's position, and as, in essence, disrespectful to that eminent personage.

Your excellency's note will be received with serious displeasure, but it is not for me to say what notice the President of the United States may think proper to take of such treatment at the hands of the ministry of a government supposed to be animated with a friendly disposition towards the United States, and I therefore dismiss this part of the subject.

Your excellency is pleased to dwell at some length on the religious liberties secured by law and enjoyed in practice in Greece by the members of other confessions than that of the dominant church, and on the "indifference and respect" manifested by the synod and people of Greece towards other sects; and in the course of this eulogium upon the Greek clergy and people, your excellency insinuates that Dr. King has applied the epithet "anti-christian" to the synod. I greatly doubt the fact, if that be the meaning, but if, in this, as apparently in other parts of your excellency's note, it is meant to personify the President of the United States, or myself, under the name of Dr. King, I deny the charge and demand its retraction.

I indeed expressed the opinion that the language I quoted from the

synod, in its anathema against the ministers of the Catholic and of Protestant churches, but ill befitted Christian teachers, and was characterized by an unchristian bitterness, and I doubt not your excellency is, as I still am, of the same opinion ; but your excellency cannot fail to perceive that this is a very different thing from charging the synod with being anti-christian in organization or character.

I have never denied that the constitution and laws of Greece guaranty the largest religious liberty, and that a considerable degree of tolerance exists in practice. The very ground of complaint is, that this tolerance is denied to Dr. King, and that he has been excluded from the enjoyment of the rights secured by law to *all*, and practically conceded to others. There is, therefore, no occasion further to discuss this point, but it is easy to imagine that the "respectable persons," referred to by your excellency, and other dissenters from the dominant church, may owe their exemption from the persecutions under which Dr. King has suffered partly to discretion in abstaining from availing themselves of the full extent of their legal rights, and partly to the fact that prudential considerations, which will readily suggest themselves to persons acquainted with the political relations of Greece, may have served them as a more effectual protection than the "indifference and respect" of the clergy and laity of the dominant church, or than the impartiality and integrity of the judicial tribunals.

I suspect, moreover, that an impartial observer, who should peruse the anathemas I have quoted, study the columns of an Athenian journal, well known as the organ of an influential body in Greece, gather the opinions and sentiments that have been openly expressed in regard to certain recent public religious acts of the officials of another church, inquire into the exciting motives of the mob, which, not many years since, maltreated the family and pillaged the dwelling of an unoffending Hebrew at Athens, and especially should investigate the history of the persecutions of Dr. King, in 1846 and 1847, in which Simonides was the most conspicuous actor, and inquire who were the real movers of that conspiracy, would conclude that your excellency's picture of the liberal and tolerant spirit that distinguishes the Hellenic church was rather highly colored. It is with pain that I allude to circumstances of which Greece has so little cause to be proud ; but your excellency compels me to do so, by insisting on the absence of a spirit of intolerance as a presumptive proof that Dr. King must have merited the hostility he has experienced.

Your excellency is pleased to regret that I had not availed myself, on a former visit to Athens, of your offer to confer with me confidentially on this subject. Your excellency is aware that confidence is properly mutual. My instructions did not empower me to enter into correspondence with the Greek government, and I could not, of course, communicate with the ministry with the necessary freedom. But I had a still stronger reason for not availing myself of your excellency's offer. My only commission was, to inquire whether the legal rights of Dr. King had been respected ; and upon this point the proper legitimate sources of information were, the laws of Greece, and the history of the trial—the statute and the record. Upon these the question was to be determined ; upon these the President's opinions have been formed.

At the same time, as all the zeal of the pretended converts, who were employed as spies upon Dr. King, and all the other efforts of his persecutors, have failed to establish a single fact which warrants the judgment against him, I can hardly suppose your excellency to be possessed of evidence which can have any *legal* bearing upon the question of his guilt or innocence; and as, moreover, his majesty's government has not thought the *President's* serious appeal to its magnanimity and sense of justice worthy of any but an evasive reply, it is not probable that *I* should have been honored with disclosures of a more important character.

It is true, as your excellency remarks, that the government and people of the United States felt a profound sympathy with the Greek nation in its honorable revolutionary struggle. That sympathy was founded not more on the early history and later sore oppression of the Hellenic race than upon the liberality of spirit manifested by the enlightened patriots of that era, in the early organic laws of the nascent state, which proclaimed the amplest religious liberty to all, and encouraged the hope that the new member of the European political system would be as distinguished for its just appreciation of the true principles of human freedom, as its ancient territory had been for its prowess in arms and its achievements in literature and the arts.

It will be a source of deep concern to the American government and people to find that the present authorities of Greece no longer recognize the principles so nobly declared, and so often repeated, by their immediate predecessors, and still so distinctly avowed by the formal words of the constitution and laws which their assent has sanctioned.

They will profoundly regret that Greece is disposed to trifle with sympathies so honorable, so heartily felt and so generously expressed, and that regret will be in no respect diminished by the fact that it is one of the most active and conspicuous of the early agents of the American people for the expression of those sympathies, whose treatment by Greece proclaims that she now repudiates them.

I renew to the minister of foreign affairs the assurance of my distinguished consideration.

GEORGE P. MARSH.

His Excellency A. PAICOS,
Minister of Foreign Affairs.

Mr. Marsh to Mr. Marcy.

[Extracts.]

SPECIAL MISSION TO GREECE,
Constantinople, July 6, 1853.

SIR: On the 24th of June, I received a note from the minister of foreign affairs, begging a delay of a few days, for considering the proposal made to the Greek government by my note of June 23d, in relation to Dr. King's pecuniary claims, and as the reasons urged by him, which were founded mainly on the difficulty of action by a constitu-

tional government upon so short notice, appeared to me sufficient, I consented to the delay. In the course of the day I had an interview with Mr. Paicos, and received from him strong assurances that the affair should be settled upon such terms as should be reasonably satisfactory to all parties, and that no time should be lost in taking the necessary measures for that purpose.

In the meantime, as the unexpected departure of Commodore Stringham had left the American citizens at Constantinople, at a moment of great excitement and alarm, if not of danger, without any efficient protection, I thought it expedient to proceed to this capital in the Levant, and I accordingly sailed from the Piræus on the 25th of June, and arrived here on the 5th of July.

It is my purpose to return to Athens, as soon as the posture of affairs appears to me to justify my absence from Constantinople, and I hope then to conclude the arrangement of the land question with the government of Greece without further delay.

I have this day received an unofficial note from Mr. Paicos, chiefly referring to the valuation to be put upon Dr. King's land, which concludes with the following paragraph:

"In conclusion, sir, with your permission, I will not pass over in silence the pain which the perusal of your note of the 23d of June, received after your departure, has given his majesty's government, on account of the intention which you thought you discovered in my communication of the 9th (21st) June, neither the letter nor the spirit of which at all admit the sense which has been wrongly imputed to it. His majesty's government was the less prepared for such an interpretation, because I had, immediately on the receipt of your note of June 22d, hastened to give you a frank and sincere explanation of the object of that communication, and the spirit which dictated it."

Mr. Paicos, it will be observed, does not pretend to deny the misrepresentation and prevarication with which I had charged him, or to palliate or excuse it; and it is evident from the tone of this note, though unofficial, that the Greek government intends neither to comply with the President's request for the remission of the residue of Dr. King's sentence, to correct its * * * misrepresentations of the President's views and demand, nor to condescend to any argumentative or explanatory justification of the * * * conduct of its tribunals in the trial and condemnation of Dr. King.

Upon this point it stands mute, and expects to sustain itself in the eyes of the civilized world by equivocation, prevarication, and misrepresentation of the grounds assumed by the President in demanding the remission of the sentence, and in exposing the illegality of the judgment against Dr. King. It remains, therefore, with the government of the United States to determine whether it ought, under the peculiar circumstances of the case, to take further steps, in vindication of its own honor and the rights of an injured American, or whether the inviolability of judicial decisions compels it quietly to submit to the original wrong inflicted upon it in the person of one of its citizens, and the aggravation of that wrong by a ministerial note, which, in spite of all disclaimers, was intended, and will be universally regarded, as a false and evasive answer, a fresh injury and a deliberate insult.

I have little doubt that the Greek government will forthwith publish in the journals of Greece, and in those of the principal countries of Europe, Mr. Paicos' note of June 9th, (21st,) as a triumphant exposure and refutation of the ground assumed by the American government in this affair, and I repeat the request, that in such case, I may be allowed to print my notes to the minister of foreign affairs, and such other documents belonging to the case, as may be necessary to refute the misrepresentations which the Greek ministry may publicly make on the subject.

A translation of Mr. Paicos' note of June 9th, (21st,) and a copy of my reply accompany a dispatch dated June 24th, (bis,) but as the package is bulky, and the posts are sometimes insecure, I have retained it for a private opportunity, which I hope will soon offer.

I have the honor to be, sir, your most obedient servant,

GEORGE P. MARSH.

Hon. W. L. MARCY,
Secretary of State.

Mr. Marsh to Mr. Marcy.

[Extracts.]

SPECIAL MISSION TO GREECE,
Constantinople, August 20, 1853.

SIR: Herewith I enclose a translation of a communication lately received from Mr. Paicos, minister of foreign affairs, together with a copy of the reply I have thought it my duty to make.

I regret being thus drawn into a protracted discussion of collateral matters, but I well know that the notes of Mr. Paicos are intended to serve, not properly as answers to the demand of the President, but as a means of misleading public opinion in Greece, and elsewhere in Europe, by misrepresenting the nature of the demands of the American government, and the real character of the question in issue.

This course was pursued with great success in the controversy with England a few years since, and public opinion has not yet been thoroughly disabused in regard to the true history of that case, in which the only error of England appears to have been excess of forbearance.

I shall make no comment upon Mr. Paicos' note, further than to observe that his denial of the distinction between a *judgment* and a sentence, as known in practice in the administration of the criminal law of Greece, and his affirmation of the want of a constitutional power in the crown to interfere with a *sentence*, are perfectly characteristic.

* * * * *

My reply has been prepared less with an expectation of convincing the Greek government, by any refutation and exposure of misrepresentations deliberately made, than because I thought some little familiarity with the language and laws of Greece would enable me, more readily than a stranger, to furnish an answer, * * * if it is deemed proper, for any public purpose, to make use of it.

It was suggested to me, at an early period of the investigation, that

the prosecution of Dr. King had been instigated by the government, as a means of coercing him to abandon or compromise his claim to compensation for his lands, which had just been renewed. I had then no *proof* that the government had interfered at all in the matter, and I accordingly did not adopt the supposition. I have since been *confidentially* informed, by an eminent person, whose character, position, and relations, entitle him to influence with the court of Greece, and who is neither a Protestant nor a British subject, that he remonstrated with the minister of foreign affairs, at the commencement of the prosecution, against the folly and injustice of the whole proceeding, but that his remarks were received with dissatisfaction, and a determination was expressed to sustain the prosecution.

* * * * *

As to the alleged interview between Dr. King and Mr. Paicos, after the conviction of the former, I have no recollection of ever having heard of it before. * * I have, however, written to Dr. King for information on the subject.

In justice to King Otho, I ought to say that I have no particular reason to suppose him acquainted with the steps taken by the ministry, in conjunction with the clergy, to influence the court, and secure a conviction.

* * * * *

I avail myself of this occasion to correct one or two trifling errors in my original report to the State Department.

It is said in the report, that the record "must by law embrace the whole evidence." There are various provisions on this subject, the sum of which would be more accurately stated by saying that the record must embrace all *material* evidence.

The breviary containing the anathemas against unbelievers is the Triodion, not the Enchologion.

I find that I was misinformed in regard to the facts in the case of the Ionian Greek priest, whose prosecution is mentioned in the report. It appears that the offence *charged* against him was not of a religious character, and, though his heterodoxy may have been the motive of his prosecution, it was not the accusation on which the proceedings were founded.

I had not observed any limitation of time, within which penal sentences must be executed, but I find a statute of limitations, fixing various periods, from two to twenty years, within which different classes of these sentences must be carried into effect.

I have the honor to be your obedient servant,

GEORGE P. MARSH,

Hon. W. L. MARCY, *Secretary of State*.

[Translation.]

Ministry of the King's Household and of Foreign Affairs.

ATHENS, July 8, (29,) 1853.

SIR: If I have not sooner replied to your note, under date of June 23 it is because I hoped to have the honor of seeing you at Athens in

two weeks, as you had led me to suppose, both by your communication of that date, and in our interview at the moment of your departure. Nevertheless, as your absence may probably be still prolonged for some days, I think it my duty no longer to delay my reply to your above mentioned note.

I know not how to express to you, sir, my astonishment at the mistake ascribed to me, of having misunderstood the position taken by the honorable President of the United States of North America, as well as your own, in the affair of the judgments of the court of correctional police of Athens, and of the areopagus against Mr. King.

You declare, sir, that you have not asked his majesty's government to express any blame or disapprobation of the acts of its tribunals, nor in any manner to annul, rescind, or vacate the judgments rendered by them; that your purpose was purely and simply to indicate the errors with which they are marked, in order to show their illegality and injustice, [that the judgments referred to were *unjust, oppressive, and illegal,*] with the view of drawing the attention of the supreme head of the State thereto, to the end that he might exercise his royal prerogative in remitting the residue of the punishment incurred by Mr. King, in virtue of judgments, in your opinion, unjust and oppressive.

Starting from this principle, you find all I have had the honor to express to you, in my note under date of June 9, (21,) concerning the constitutional powers of his majesty, and the absolute independence of the judicial authorities in Greece, inadmissible and wholly inapplicable to the case in question.

I should be grieved to the last degree, sir, if I had had the misfortune to fall into such an error. It is, therefore, necessary for me to cite the facts; and from these facts you will judge whether it is a mistake on my part, or a position which has been forced upon his majesty's government, and which I could not abandon.

We read towards the end of your note of the 13th of May literally what follows: "that the President of the United States expects that a *formal revocation* of the sentence of banishment against Dr. King be *forthwith* granted by the proper department of [the government of] Greece." Some pages above, we find the following passage: "If this decision be *sanctioned* by the government." I have perused, very attentively, your note of May 13, both before and since the reception of that of May 13; it has been impossible for me to find there a single word referring to a demand of pardon, or a word of appeal to the royal *magnanimity* [to its magnanimity.]

I now leave it, sir, to your enlightened judgment, to determine whether the passages above cited admit, in any manner, directly or indirectly, the idea advanced in your note of June 23. I trust you will allow that it was impossible to attribute to the words "*a formal and immediate revocation,*" the sense of a demand of a pardon.

To *revoke* a judgment is, if I am not mistaken, to annul it; not to *sanction* it is not to give it validity. Now, the revocation of a judgment exceeds the constitutional powers of the head of the State, and his sanction is not necessary to the validity of judicial acts.

The royal pardon, annulling the effects of a judgment, in whole or in part, does not revoke it, or in any degree derogate from its character,

which it preserves, notwithstanding the exercise of the royal prerogative. Hence it results, sir, that the government of his majesty had just and well founded reasons to believe, and it still in good faith does believe, that it is the revocation of the judgment which has been demanded of it, and that a formal and immediate revocation, which you will readily perceive cannot be considered as a simple request. It is in this conviction that it has exposed, in all sincerity, but at the same time with all possible frankness, the absolute constitutional impossibility, in which it finds itself, in spite of its desire to gratify the honorable President of the United States, of acceding to such a proposal. The distinction between the judgment which declares the fact established, and the judgment which applies the punishment, though just in theory, is not in practice observed with us.

• Our jurisprudence not admitting two distinct judgments in a matter of correctional police, recognizes but one, divided into two parts; but the executive authority, having no power to revoke either the one or the other, while leaving the judgment unaffected, has recourse to the royal clemency, whenever reasons of public interest or special personal circumstances imperiously demand its intervention to introduce any mitigation of the rigor of the law.

Mr. King would have himself experienced its gracious exercise, if he had thought proper to avail himself of it, when he came to announce to me his conviction; this course was suggested to him by me, at the time, as the only legal means to which he could have recourse. He did not choose to avail himself of it, and whose is the fault? At the same time, the non-execution of the judgment pronounced against him, for a year and a half, is a sufficient proof both of the moderation of his majesty's government towards him, and of its regard for his position, as well as for the pecuniary claims which he pretended to have to urge against it. But, supposing the error you ascribe to me really to exist, sir, it seems to me that it was unfair to yield to suspicions that nothing authorized, in ascribing to a deliberate intention an involuntary mistake, which might have arisen from a want of familiarity with a language so little used in Greece. It would have been enough to have pointed it out to me, and a verbal or written explanation would have dissipated all uncertainty, and proved on which side the error lay.

But, whether there was or was not a mistake, his majesty's government cannot but earnestly repel the gratuitous assertion "that it has not thought it convenient to reply to the representations of the chief of a sovereign State, and that it has been wanting in respect towards him," and it warmly rejects such an idea as unjust, rash, and contrary to the sentiments which the Greek nation entertains toward the American people for the kindnesses received from it at critical moments, and to the respect due to its present worthy chief magistrate, who has been called, by his virtues and his eminent qualities, to preside over its destinies. The government would not have disregarded the consideration deserved by a request for a pardon, in the name of the President, if it had been properly expressed.

I am glad, sir, that you have chosen to abstain from all observations on this point, not knowing, as you say, what notice the President will take of the manner in which his representations have been treated in

Greece. I am quite sure that the honorable President will be greatly surprised at an idea which nothing justifies.

Admitting, as I trust you will, the sense which his majesty's government was compelled to give to your note of May 13th, and particularly to the passages above cited, you will no longer find in my note of 9th (21st) June the offensive character with which you reproach it, and I am happy to believe that you will regret having been unjust towards his majesty's government. You will consequently admit that the absolute impossibility in which his majesty's government finds itself of allowing a demand of the revocation of a judgment, and which results from the constitutional institutions of the country, neither can, or ought, to be styled a refusal or a rejection; and that, moreover, the determination not to enter into all the details of a legal proceeding, which could have only ended in a useless and superfluous display of theory and doctrine, was the necessary consequence of this constitutional impossibility. It is, then, neither just nor accurate to say that his majesty's government have not thought the representations of the head of the government of the United States worthy of a reply. Its reply has been full, and in terms of perfect propriety. But you will conceive that a feeling of dignity and of national independence—which you will appreciate, as I am happy to believe, in its true light—prevented me from replying to grave charges, which I have treated at least as unusual, and which I begged you to allow me to abstain from answering.

The omission to reply to accusations of this nature is neither a departure from propriety nor a want of respect; for, in answering them, we must admit them as true or defend ourselves as accused. We honestly think that any demand whatever, addressed by the head of an independent and sovereign State to the head of another State equally sovereign and independent, does not require to be supported by grave imputations, in order to be allowed; and we think, further, that even the request "of a favor" has nothing wounding to the government that prefers it, while it honors that which accords it. But let us admit, as a matter of principle, that one ought not to ask as a favor what one may demand as a right, we still think that even in this case a simple, calm, and argumentative exposition of the facts in support of the demand, without anything calculated merely to irritate, would suffice to sustain it.

We do not deny, however, that a government has, in principle, the right of interposing in favor of its subjects unjustly injured in their interests, but we may contest the case and the form of intervention. The tribunals, being composed of men, are necessarily liable to error; hence the institution of higher tribunals, and the frequent changes in the jurisprudence of supreme courts.

It is thence allowable to point out the errors of the judges, and to analyze them in the way of argument and discussion. But to impute to the judges culpable intentions in the exercise of their functions, to ascribe to them dishonesty in the discharge of their duties, is not to point out errors—it is to accuse them; it is to declare them criminal and unworthy of the character with which they are clothed. An error resulting from a weakness, or a defect of human intelligence, may be

pardonable ; but the government which should show any indulgence to the crimes of a judge would render itself criminal.

Is it, then, mere errors that you have pointed out to the attention of the government, or rather acts of dishonesty, worthy of the severest reprehension ? The judge, who so far forgets himself as to substitute his passions, his prejudices, and his resentments, for the principles of justice ; who, abusing his authority, intentionally perverts the letter of the law to evade its spirit ; who, to avoid its just and faithful application, resorts to miserable subterfuges, commits crimes the more reprehensible, because they are perpetrated in the sacred name of justice.

Such, sir, are the acts which you lay to the charge of the inferior and superior magistrates of the realm, and from them, according to you, result the injustice, the illegality, and the oppression of the judgment, the formal and immediate revocation of which you have demanded.

It is clear that even a request for a pardon could not be granted upon such denunciations, without an admission of the truth of the facts charged, and the infliction of a severe punishment upon all the most exalted officers of the judiciary.

His majesty's government would not hesitate to exercise exemplary severity against unworthy magistrates, if conclusive proof could be furnished of their culpability. Guilt is never to be presumed ; it demands irrefragable proof. A mere argument upon the false interpretation or wrong application of the law, however well founded, does not suffice to establish the existence of the crime, otherwise every false interpretation or wrong application of the law would constitute, not a cause of further legal proceeding, but a punishable act.

It is a source of lively regret to his majesty's government, that a just idea of the administration of justice in Greece is not entertained in the United States ; but it hopes the right will not be denied to it of enjoying that opinion of its judiciary which a long experience of the integrity, the independence, and the ability of its magistrates entitles it to form. While expressing my respect for the reasons which prevented you from holding a direct communication with me on your first visit to Athens, I must be permitted to remain convinced that an oral and confidential explanation would have sufficed to secure an easy and prompt solution of the question which engages us. I did not then propose any official communication, and to prove to you the conciliatory disposition with which his majesty's government has always been animated, I have only to recall to you the waiver on its part of formalities, upon the fulfilment of which it had a right to insist, before receiving and answering your communications.

I hasten to express to you the satisfaction I receive from the explanations you have been pleased to give me with respect to the word anti-christian, [unchristian.] In fully admitting them, I think I may refrain from further explanation on the subject. I only ask you to believe that neither the honorable President nor yourself could ever be intended under the name of Mr. King. You will not take it ill, if I think myself entitled to insist on the religious tolerance generally enjoyed in Greece, in a complete and absolute manner ; and if I can but regard as allegations, without proof, all that you are pleased to say

with respect to the considerations to which persons of the different Christian communions owe the protection and tranquillity which they enjoy in Greece.

A few isolated, though much to be regretted facts, like those you mention in your note, no more justify the opinion you would form of the spirit and character of a nation, than the criminal acts which occur in all countries, even the most civilized, characterize them.

In conclusion, sir, allow us to hope that the deep sympathy which the American people so cordially felt, and so generously manifested towards us, in our glorious struggle for independence, is not represented in Greece by Mr. King; and that the worthy and honorable President of the United States is too elevated and too enlightened to make him the arbiter of the noble and exalted sentiments of the American people towards Greece. Of these the Greek people will retain an agreeable recollection, so long as its modern history shall recall to it the fairest days of its national glory.

I think, sir, I have explicitly replied to all the most essential points of both your notes, and that I may hold myself excused from answering anything not closely and necessarily connected with the question which occupies us. I feel myself, in fact, too much embarrassed to reply to the comparison you draw between the enlightened patriots of the epoch of our struggle and the Greeks who now rule Greece, as well as to some other arguments of the same nature. A sentiment of dignity and national honor leads me to prefer silence in this respect, and you, sir, are too just to find this sentiment blameable.

Accept, sir, the assurances of my high consideration.

A. PAICOS.

His Excellency G. P. MARSH,

*Minister resident of the United States of North America,
near the Ottoman Porte, charged with a special mission to Greece.*

CONSTANTINOPLE, *August 19, 1853.*

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of your excellency's note of July 8, (20,) 1853, and though I am reluctant to protract a discussion which your excellency has never allowed to turn upon the real merits of the question at issue between our respective governments, but has chosen to confine altogether to matters collateral, I cannot refrain from noticing some of the most remarkable features of this note.

Your excellency begins by detaching from their proper grammatical connexion, and from the accompanying phrases, which serve unmistakeably to qualify and explain them, certain expressions occurring in my note of May 13th; and without noticing the general purport of the President's demand, or the particular phraseology which fixes its character, proceeds to argue, from the language thus detached, that his majesty's government has rightly construed the nature of the demand. In spite of the plain and unequivocal meaning of the terms used in my note, "revocation of" (not the general *judgment* of conviction, but) "*the sentence of banishment,*" and of my own solemn denial of the sense

imputed to these expressions, your excellency is pleased to declare that his majesty's government had just and well-founded reasons to believe, and in good faith *still does believe*, that it is the revocation of the *judgment* which has been demanded of it."

I know that circumstances too often justify skepticism as to the frankness and fairness of intention of governments, and the representatives employed by them, yet I must consider your excellency's attempt to overrule a foreign negotiator, upon a question of the sense in which *he has used* words and phrases of his own language in an official communication, as an assumption quite new in the literature of diplomacy.

Had the question turned on the signification of the words "revocation" and "sentence," *taken by themselves*, the identity of form with that of French words of a somewhat different acceptation, would naturally have suggested the supposition that your excellency's misconstruction of the President's demand was a mere misapprehension, but the suppression of qualifying and explanatory phrases, and the refusal to accept the interpretation furnished by me, and to believe the assurances I have given, (and which I now renew,) in respect to the *sense intended*, would fully justify me, were I disposed to avail myself of a fair occasion for retorting offensive expressions, in declaring that I receive your excellency's disclaimer of a conscious want of respect for the President's representations, and of an intentional perversion of them, with equal incredulity. I prefer, however, to meet and answer your excellency's argument on this point in a different spirit.

I have, in a former note, drawn your excellency's attention to the distinction uniformly made in the terminology of English and Anglo-American criminal law between the *judgment*, which declares the guilt of the accused, legally established, or, in other words, *convicts* him of the crime with which he is charged, and the *sentence*, which fixes the nature and measure of the penalty. It should be added, that in the same legal dialect, "revocation" is not a term of art applicable to the rescinding of a *judgment*, but when used at all, as it seldom is in the technical dialect of our criminal law, only to the recalling of interlocutory orders and the like. Judgments are said to be *reversed*, *quashed*, *set aside*, or *vacated*, but "revocation" is used only in reference to matters lying within the discretion of the authority which exercises the power to revoke; and I may here notice, as an exemplification of the familiar use of this word, that in different parts of the very instructions, under which I have the honor to act, the "revocation" and the remission of the sentence in question are employed as convertible and equivalent terms. Your excellency has also overlooked the proper force of the word "grant," immediately following the expression above quoted. We only "grant" what we have the legal right to refuse, and when we ask that anything be "granted," the very form of the demand implies, that however strong we may consider the moral obligation to yield to our request, we, for the time being, do not exact it as a right. But, without insisting upon niceties of technical and verbal criticism, some of which can be supposed familiar only to students of English and Anglo-American law, I am quite sure that your excellency, upon a repusal of my note of May 13th, cannot fail to perceive, that, not only

nothing was asked beyond the remission of the unexecuted portion of the sentence, that, namely, of the *banishment* of this person, so formidable to the "common safety" of the realm of Greece, but that, on the contrary, all further demand was distinctly waived. I did indeed endeavor, and, as I think successfully, to establish the proposition (a proposition which your excellency has been too candid to dispute or to attempt to invalidate) that the judgments rendered by the court of correctional police, and the areopagus, against Dr. King, were unjust, illegal, and oppressive, as the ground of the President's expectation, that the proper department would remit the sentence of banishment; and in the course of the argument I pointed out the disastrous consequences which the *principles* of the decisions involved. It is also true, as your excellency observes, that the President did not invoke the *magnanimity of his majesty* in terms, both because he was not advised whether the constitution of Greece lodged a pardoning power in the hands of the crown, its council, the national legislature, or some other body, or provided some other mode for remitting criminal sentences; and also because he thought, that when the *injustice* of the judgment was shown, the magnanimity of the "proper department" would spontaneously dictate, at least, the reparation demanded.

The President of the United States would not ask a remission of the sentence of a person fairly and justly convicted of an offence implying moral turpitude, nor would he now demand his majesty's intervention if he believed that the "common safety" of Greece, which he had supposed to rest on a surer foundation, were really exposed to imminent peril from the presence of Dr. King, or that the "morals" of a virtuous people were likely to be contaminated by the "manner of life, the character, the conduct," or the example of one whose services to the Greek nation have received testimonials of the most flattering approbation from Hellenic sources, which every Greek will readily recognize as entitled to the highest respect.

But to return to the argument. Your excellency cannot but have observed that, besides the formal limitation of his demand to the revocation of the *sentence of banishment*, the President expressly mentions, among other reasons for not exacting a full satisfaction, his desire to "respect even the *forms* of the law," and his consciousness of "the delicacy and difficulty of animadversion by one branch of a government upon the proceedings of another," thus, by the plainest implication, waiving all demand of derogation from legal form, all censure of the proceedings of the judicial tribunals. Your excellency is further aware that, in stating the simple and moderate "*expectations*" of the President, I expressly declared that I was not instructed to demand "any pecuniary indemnification or other *satisfaction* to Dr. King, (both of which would have been necessarily implied in the annulling of the judgment *ab initio*) or "any *retributive measures* against those at whose hands he had suffered wrongs so injurious to himself, and so discreditable to the authorities immediately concerned in the infliction of them." And I concluded by summing up the whole demand, in expressing my confident belief that *his majesty* would "fulfil the just and reasonable expectations of the President, by relieving Dr. King from *liability to exile*, or

other persecution under the wrongful sentence which had been pronounced against him."

As to the other expression, quoted by your excellency from my note of May 13th—"if this decision be *sanctioned* by the government"—I need only remark, that it must be apparent, on the most cursory perusal of the paragraph in which it occurs, that the "decision" here referred to is not the mere judgment of conviction against Dr. King, but the affirmance of the vicious doctrine that the simple public utterance of religious opinions, contrary to those of the Greek church, does, in law, constitute the offence of "attacking that church with malevolent expressions." The words, "*and impartially carried out by the courts,*" immediately following, and grammatically connected with the expression above quoted, but which your excellency has not thought proper to cite, unequivocally show that it was not the particular judgment, but its *principles*, that I assailed in this part of the argument, which, moreover, referred wholly to the future general evils that must result from the recognition of such principles, and not to the present private and unjust legal consequences of the conviction of Dr. King.

If, then, the real signification of the phrase be sought, your excellency will no longer understand the word "sanctioned" as implying any formal act of the government, or as meaning anything more than a tacit acquiescence in the narrow and erroneous principles laid down by the courts. To avert the evils which would inevitably flow from such acquiescence, the government need neither formally refuse its "sanction," rescind the judgment, nor censure the tribunals, and I may excuse myself from indicating to your excellency the constitutional means by which consequences so deplorable might be prevented.

I conclude, then, that *his majesty's* government neither has, nor has had, any just and well founded reasons to believe that a revocation of the *judgment* against Dr. King has been demanded by the President of the United States, and the President will doubtless be of opinion that the government of Greece, in entertaining such belief, has adopted a hasty conclusion, which it will, upon a re-examination of my note, have the candor readily to renounce.

I have read with surprise your excellency's affirmation, "that the distinction between the "*judgment* which declares the fact established, and the *sentence* which applies the penalty, though just in theory, is not recognized in practice in Greece," because, if your excellency is right in treating these two parts of a criminal process as necessarily an entirety, the proceedings in the particular case we are considering, which not only distinguish, but separate them, as independent portions of the record, are irregular, and the sentence ought for that case alone, if for no other, to be remitted.

Upon referring to the record of conviction, I find that after hearing the evidence and the arguments of counsel, and duly deliberating thereon, the court, first reciting the history of the case, the facts found by it, and its legal conclusions thereon, proceeds to *pronounce* the prisoner guilty, or to *convict* him of the offence charged against him, and to certify, under the official signatures of the justices and clerk, that this conviction "was *adjudged*, decreed, and published." Here, then, we have, in precise analogy with the English criminal law, the judgment

of guilty, the conviction, complete, distinct, and independent; and, having rendered this judgment, the court *ex officio* proceeded no further. But the record informs us further that *after* the publication of this judgment, the attorney general moved the court that the prisoner pronounced guilty *be sentenced*; and upon this motion, and not *proprio motu*, as a matter of course, the court, citing the sections of the penal code applicable to the case, *sentences* the prisoner, before *convicted*, to imprisonment, the costs of prosecution, and banishment from the realm of Greece, and it authenticates the *sentence*, as it had already done the *judgment*, by new signatures of the justices and the clerk; and it is worthy of special notice that this second certificate of authentication *omits* the word *adjudged* for the plain reason that the *judgment* had been completed before.

The distinction under consideration is recognized by article 371 of the penal code, which requires a formal motion by the public prosecutor, and, of course, the concurrence of that functionary, who is not a judicial officer, for the passing of the sentence. By article 397 of the same code which prescribes that the deliberation upon the penalty shall take place *after* the publication of the judgment, and upon the motion of the prosecuting officer, and by other equally unequivocal provisions of the law. But, although the language of the record and of the penal code seems most plainly to distinguish verbally, as well as in form and substance, the act of adjudging from that of sentencing, I shall not affirm that the technical vocabulary of the Greek law furnishes appropriate terms of art *substantive* to designate the one as opposed to the other. Yet, notwithstanding your excellency's repudiation of the "distinction between the *judgment* which declares the fact established, and the *sentence* which applies the penalty," as known to the *practice* of the criminal law of Greece, I think myself well warranted in believing, on the evidence of this record, and of the penal code, that this distinction is "recognized in practice," if not in name, in Greece, and I may add, that so far as the *form* of the record is concerned, the distinction is even more plainly marked in the Greek than in the English and American criminal procedure; because in the records of these countries the judgment and the sentence are not separately authenticated, though in contemplation of law distinct.

Your excellency affirms that the "two parts of a criminal judgment" (that which declares the fact established, and that which applies the penalty, as I suppose your excellency to mean, rather than the ——— and the ———) constitute an entirety, and that "the executive power has not the right of revoking either." I have established the proposition that the distinction denied by your excellency does, in practice, exist, and, to overthrow the repeated declaration that the executive has not the right to remit, or, if your excellency prefers the word, to revoke, a penal sentence, I need only refer to the 32d article of the constitution, the phraseology of which is almost identical with that of the sentence in this case. The court, in accordance with the sense and the *terms* of the attorney general's motion, *sentences* the prisoner to the penalty.

The constitution confers upon the king the right of remitting, commuting, and mitigating *penalties decreed by sentence* by the courts; and,

of course, if words have meaning, it is plain that the crown has all the power which the President has asked it to exercise. The fallacy of your excellency's entire argument rests on the mistaken assumption that "revocation" was used in my note as a word of art, signifying the judicial rescinding of a judicial act, and necessarily implying retro-active effects.

Your excellency bases your continued refusal to notice the arguments by which the illegality and injustice of the judgments is urged, as a reason for the remission of the unexecuted portion of the sentence, on the ground that a charge of misconduct, on the part of the courts, is such an offence to the dignity of the supreme government that self-respect forbids an answer. I have certainly, neither in my original report to my own government, nor in my communications with that of his majesty, charged the government of Greece with being, in any manner, party or privy to any of the persecutions and illegal annoyances to which Dr. King had been subjected for years before his trial, or to any of the errors, irregularities, and injustices which characterized that remarkable proceeding; and I am at a loss to explain that excess of sensibility on the part of a government, strong in the consciousness of right, which leads it to feel its own pride so much wounded by charges against a subordinate branch, never intended to apply to the higher officers of state, that it shrinks from the investigation of these charges and prefers unceremoniously to reject a just demand rather than, by consenting to examine a record alleged to carry error on its face, to admit that its tribunals are fallible and may be unjust.

I remembered that the existence of Greece, as an independent State, was due to the co-operation of nations whose faith widely differed from that of the oriental church, and that the present dynasty ascended the throne under stipulations securing the largest religious liberty, not as a privilege, but as a right; and I knew that former administrations (and perhaps the present) had, in some instances, sheltered Dr. King from the violence of his persecutors. I thought the government of Greece too enlightened to cherish any sympathy with the narrow weaknesses of sectarian intolerance, and I imputed to it no share in the conspiracy of Simonides and his coadjutors; no part in the plot to entrap Dr. King, by the hypocrisy of feigned proselytes, into some unguarded expression, and thereby lay the foundation of a criminal prosecution, and I expressed to my government a confident hope that the legal officers of Greece were mistaken, if they supposed themselves to represent truly the opinions and the wishes of the sovereign and ministry of the realm.

Under these circumstances I can by no means allow that it is a proper sentiment of injured self-esteem which leads his majesty's government to shut its eyes to judicial wrongs, patent of record, and to refuse to be just because its organs have been unjust.

Your excellency will remember that I pointed out, as the main objection to the judgments, errors in law apparent on the record, and requiring no proof of *ab extra*, and that I noticed the irregularities of the trial only as an evidence of the *animus* of the courts. But suppose I did impute these errors to a wrong intention, is his majesty's government prepared to say that where the record of a court itself shows that

a prisoner has been illegally convicted, it will refuse to remit the sentence, barely because improper motives are alleged to have influenced the court? A true sentiment of dignity, of self-respect, and of regard for the incorrupt administration of justice, would, in such case, in my judgment, impel the government first to ascertain whether the alleged wrong had been committed, and if it was forced to an affirmative conclusion, to repair the wrong, and then to take such further measures to prevent its repetition and avert its evil consequences as to its own wisdom should seem meet.

I cheerfully do his majesty's government the justice to admit that it has never, to the best of my knowledge, sanctioned the principles on which this judgment is founded, by any avowal of their soundness; and I am happy to add that your excellency, in your encomiums on the general independence and integrity of the Greek judiciary, has cautiously abstained from adding authority to the legal errors of this particular judgment, by the weight of your excellency's opinion.

It is a source of extreme regret to me that your excellency, by continuing to "insist on the religious tolerance generally enjoyed in Greece, in a complete and absolute manner," compels me again to notice a point, which, like many of the observations of your excellency's note, is entirely collateral, and independent of the matter in issue. Your excellency will readily admit, that the religious liberties of Greece are due, not merely to her constitution and statutes, but also to that paramount law which secured those liberties, not as a boon from the local government, or an indulgence from the ecclesiastical authorities, but as a fundamental condition of her own national independence. The word *toleration* has therefore rightfully no place in the legal vocabulary of Greece, and the free existence of sects dissenting from the oriental church, however creditable it might be to the sense of right and justice in the government and people of that country, would lay no foundation for a boast of superior liberality. Even the law too of 1833, under which Dr. King was convicted, as well as the constitution of 1844, place all religious sects alike, so far as their public worship, the freedom of opinion, of speech, and of discussion are concerned, on a footing, not of indulgence, but of *equality*, and if the law is indeed impartially administered, all sects are equally protected, all violations of their religious rights are punished with equal severity. But I have yet to learn, that the perpetrators of any of the wrongs of this character, referred to in my note of May 13th, towards Dr. King, or other dissentients in Greece, (however strongly many of them are condemned by the public opinion of the most enlightened portion of the Hellenic population, as well as, no doubt, by the head of the State, and his constitutional advisers,) have ever been visited by the penalties prescribed by law for such offences, or even been openly rebuked by the conservators of the public peace. Your excellency will not deny that the columns of some of the Greek journals daily teem with "malevolent expressions" towards dissenting creeds, of a more acrimonious character than the most offensive language imputed, however groundlessly, to Dr. King, and that the officials of the Greek church have often, in public manifestos, unsparingly assailed the Catholic and other churches, whose doctrines are at variance with their own, and I put it to your excellency, whether

these offences against the 17th article of the law concerning reviling and the press, have ever been the subject of a criminal prosecution ; and again, whether your excellency believes that the attorney general would have accused, or the Greek courts convicted, a Greek ecclesiastic of the offence of " assailing with malevolent expressions " the Catholic or any Protestant church, upon such evidence as was adduced against Dr King ?

Until your excellency shall be able to answer these queries in the affirmative, I shall continue to be skeptical in regard to the *actual existence* of the religious liberties, which of right ought to be enjoyed in Greece ; and when the Greek tribunals shall have meted out to the offenders I have pointed out to your excellency the penalty appointed by law, it will be time enough to boast of the impartiality of the criminal jurisprudence of Greece.

I agree with your excellency that occasional instances of the commission of crimes do not characterize a people. It is the neglect to punish offences that brings discredit upon a nation. The facts I have referred to are too notorious to admit of dispute ; and if, while the mere public expression of opinions, contrary to those of the oriental church, is visited with heavy penalties, the Greek clergy, the journals, and the mob are allowed to assail with unrelenting bitterness the faith, the character, and the person of every dissentient Christian, there needs no further proof of either great remissness on the part of the constituted authorities of the State in executing laws which promise equal protection to every creed, or of a vicious public opinion more powerful than the law. The error, however, lies rather in enforcing a law, itself of questionable expediency, against one not legally shown to have infringed it, than in the omission to punish those who clearly have done so, and Greece would earn more credit by expunging from her code a statute so vague, so liable to uncharitable misconstruction, so little in harmony with her own organic law, than by enforcing the provisions against the most flagrant violations of its letter or its spirit.

Upon reviewing the whole correspondence between your excellency and myself, I see no cause to change my position. Your excellency has met the objections urged against the conviction by no denial of their soundness, or by any argument in support of the legality of the judgments. Upon these important questions, which involve so deeply the honor of Greece, her government stands mute, and chooses to allow grave charges against the administration of her law, formally made by a power entitled to respect, to go forth to the world, not unrefuted merely, but uncontradicted.

Under such circumstances, the further discussion of collateral points into which your excellency enters with so much zeal, is evidently quite idle ; and so long as the *gravamen* itself is untouched, nothing will be gained by forcing within the sphere of debate past occurrences and existing facts of a character which can only serve to strengthen the unfavorable impression that the extraordinary nature of the proceedings against Dr. King is calculated to produce.

The President of the United States has assailed nothing but these proceedings ; and if other facts equally discreditable to their authors have been brought into notice, it is because your excellency has vaunt-

ed, by way of presumption, against a possibility of a wrong towards Dr. King; a state of things which, so far as respects Greece, there is, unhappily, too much reason to believe quite utopian.

In conclusion, I have only to express the hope that a dispute upon the signification of a non-technical word—the objectionable acceptance of which is repudiated by the party using it—will not be allowed to prevent the granting of an honorable satisfaction to an honorable demand; and that his majesty's official advisers, satisfied with the disclaimer and the explanations I have given, will now counsel him to act in accordance with the just and noble sympathies which I cannot err in ascribing to him, and to which the misinterpretation of my note alone has no doubt hitherto prevented him from yielding; and thereby retain what his majesty now possesses, the confidence and respect of a great and generous people, whose friendship and regard the proudest of nations would not be wise in spurning.

I have the honor to renew to your excellency the assurance of my distinguished consideration.

GEORGE P. MARSH.

His Excellency A. PAICOS,

Minister of the King's Household and of Foreign Affairs.

Mr Marsh to Mr. Marcy.

[Extract.]

SPECIAL MISSION TO GREECE,
Constantinople, October 11, 1853.

SIR: Your dispatch, No. 28, of September 2, 1853, announcing the appointment of Mr. Spence to succeed me as minister resident at the Porte, does not instruct me to take any further steps in relation to the questions pending between Dr. King and the government of Greece; and I presume, therefore, that the President does not expect me to continue that negotiation.

In the present condition of Turkey it would, in my judgment, be improper for me to leave my post at this moment, and if I were immediately to embark for Athens, it is not probable that the negotiation could be concluded before I should be superseded by the arrival of my successor.

I shall accordingly not return to Greece unless I receive instructions to that effect before my arrangements for leaving Constantinople are completed. I take the liberty to suggest that the person hereafter charged with this negotiation should be furnished with copies from the State Department of all the papers connected with the subjects under discussion, and particularly of the translations from the Greek, unless he is familiar with the modern *legal* vocabulary of that language.

Several of the translations were made, and all were revised and corrected by me. The gentlemen who executed those not prepared by myself were well acquainted with Greek, but not being professional lawyers they did not possess the necessary knowledge of legal tech-

nology, and there is at Athens no person competent to make new translations of the documents in question.

Having the originals before me I did not require the translations for my own use. The condition of my eyes did not allow me to make copies, nor did I feel at liberty to incur the expense of having them made by others, merely for the purpose of keeping them on file.

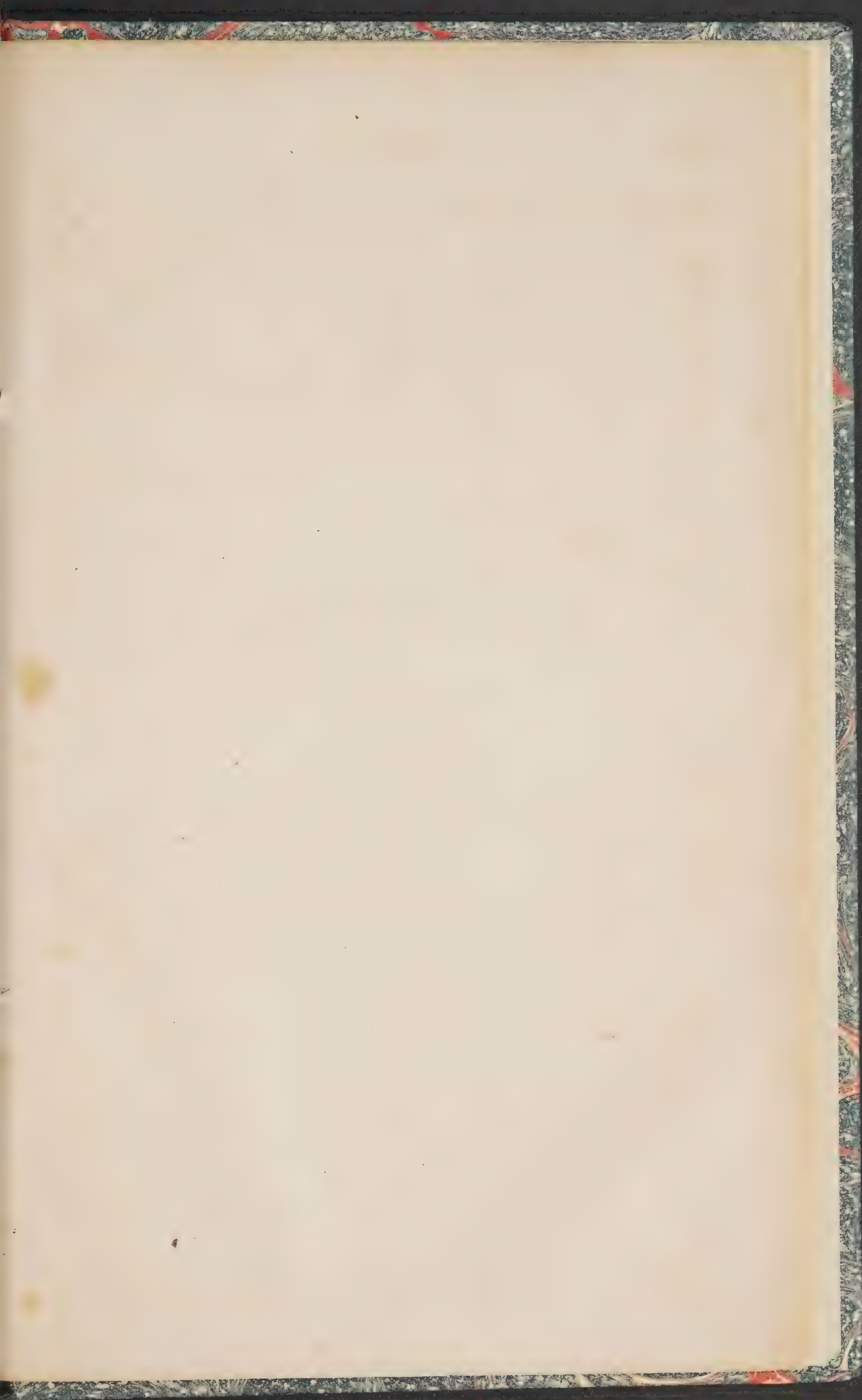
The originals of all the papers furnished me by Dr. King, as well as the Greek copies of the records, &c., remain in the custody of that gentleman; and I shall deposite with Mr. Brown all the communications I have received from Mr. Paicos, minister of foreign affairs, so that copies of these latter may be dispensed with.

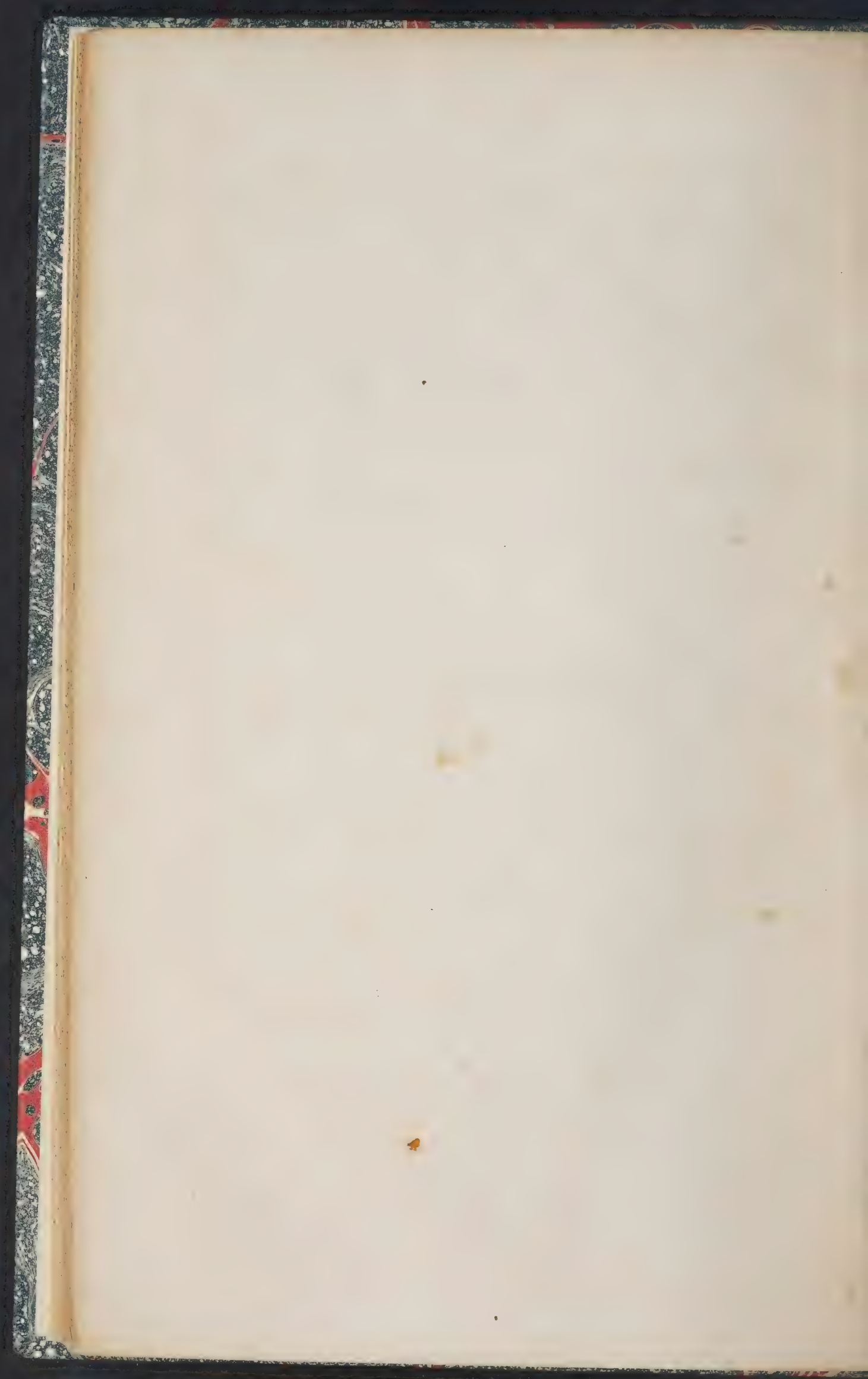
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Your obedient servant,

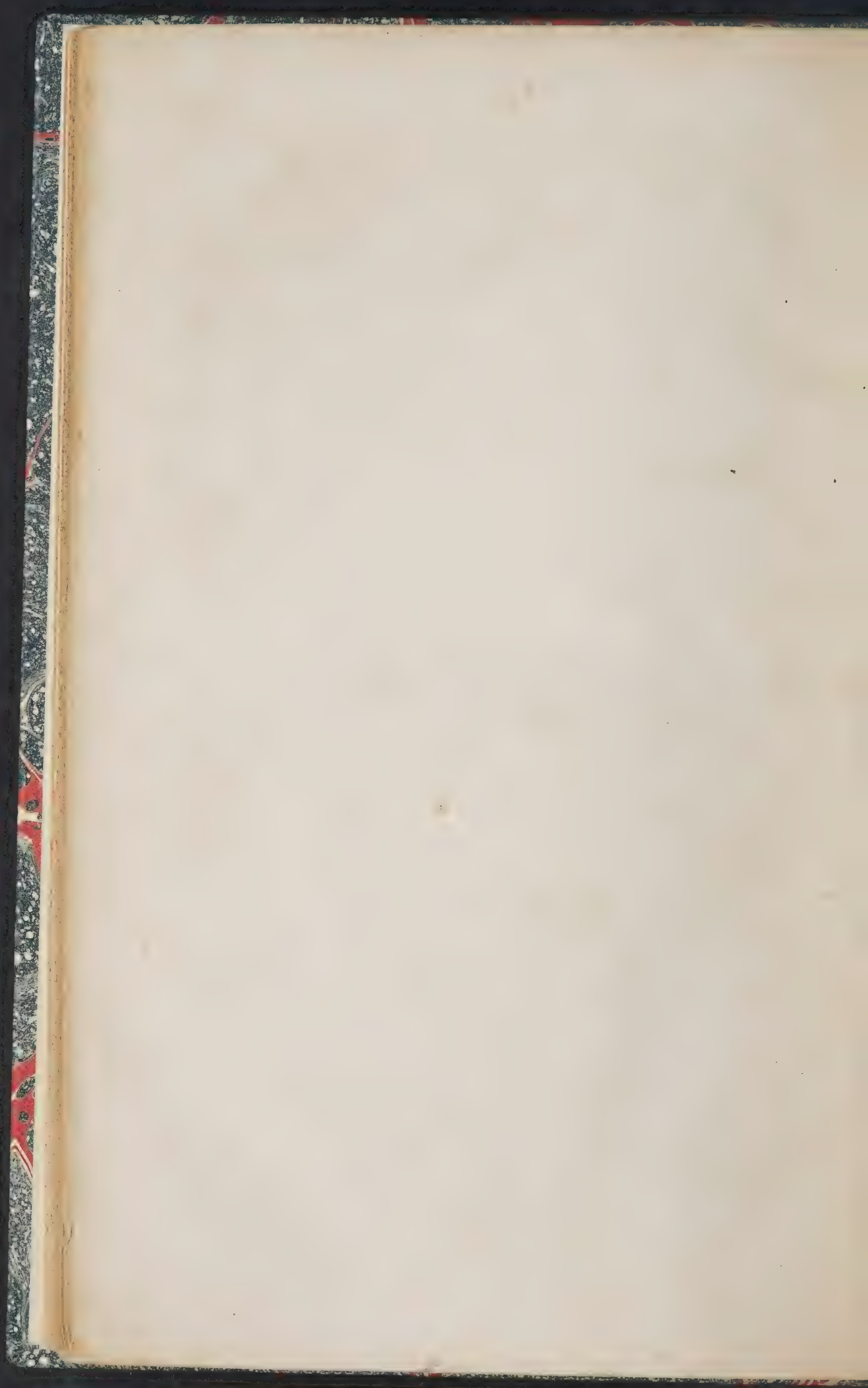
GEORGE P. MARSH.

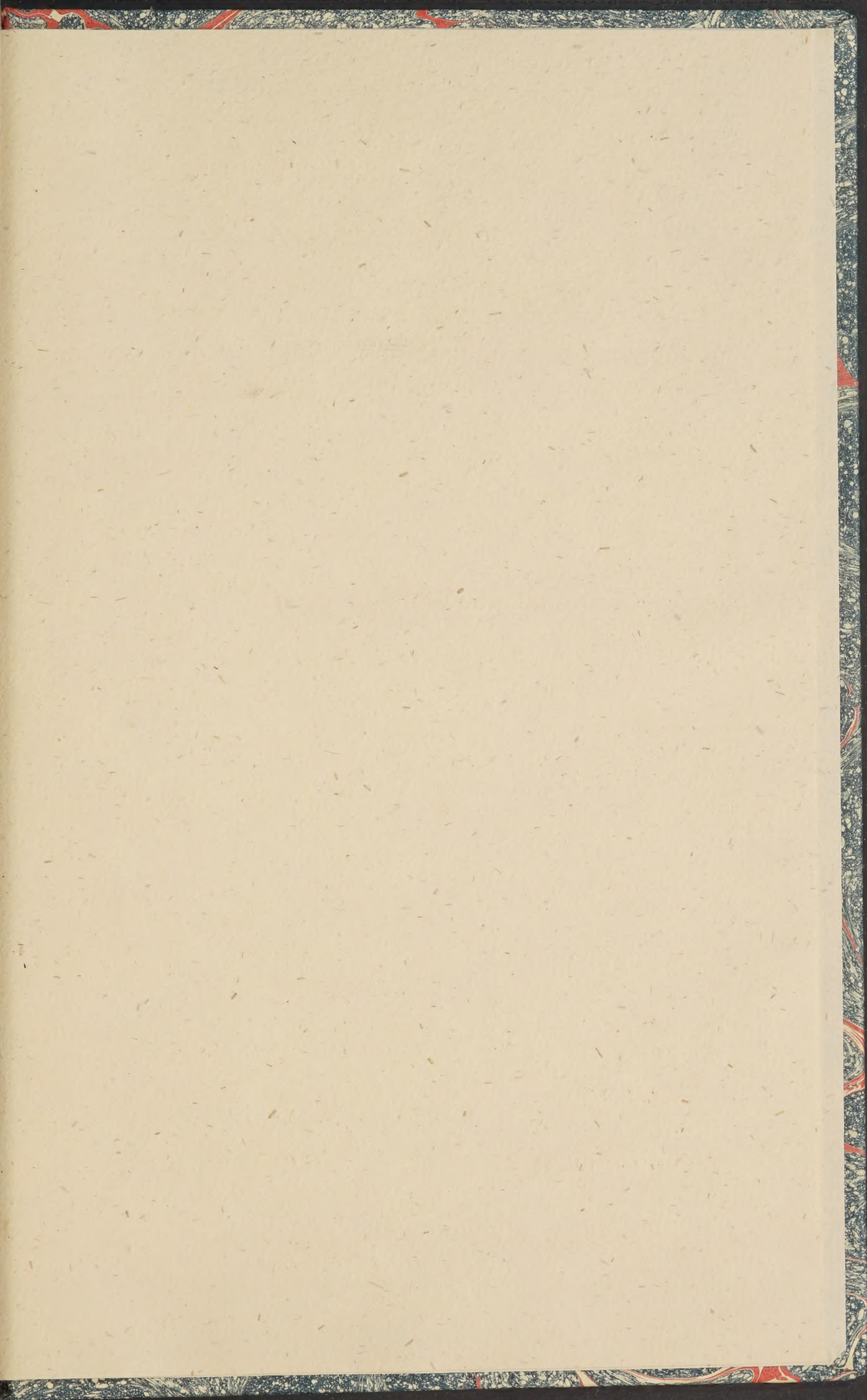
Hon. W. L. MARCY,
Secretary of State.











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